

No. 10360

United States

vol
2333

Circuit Court of Appeals

For the Ninth Circuit.

MILWAUKEE MECHANICS' INSURANCE
COMPANY, a corporation,

Appellant,

vs.

SILVO QUESTA and JENNIE QUESTA, hus-
band and wife,

Appellees.

Transcript of Record

Upon Appeal from the District Court of the United States
for the District of Nevada

FILED

MAR 10 1943

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS
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For the Appellant:

Messrs. LONG & LEVIT,
Merchants Exchange Building,
San Francisco, California,

Messrs. HAWKINS, RHODES &
HAWKINS,
153 N. Virginia Street,
Reno Nevada;

For the Appellees:

WILLIAM S. BOYLE, ESQ.,
Gazette Building,
Reno, Nevada. [1*]

In the District Court of the United States in and
for the District of Nevada

No. 199

SILVO QUESTA and JENNIE QUESTA,
husband and wife,

Plaintiffs,

vs.

MILWAUKEE MECHANICS' INSURANCE
COMPANY, a corporation,

Defendant.

COMPLAINT

Plaintiffs complain of defendant and for cause
of action allege:

I.

That the defendant, Milwaukee Mechanics' Insurance Company is a corporation duly organized and existing under and by virtue of the laws of the State of Wisconsin and licensed to do business within the State of Nevada.

II.

That the plaintiffs are citizens of the State of Nevada and the defendant is a citizen of the State of Wisconsin; that the amount in controversy exceeds, exclusive of interest and costs, the sum of Three Thousand Dollars (\$3,000.00).

III.

That on August 1st, 1941 and for a long time

prior thereto and at all times mentioned in this complaint the plaintiffs, Silvo Questa and Jennie Questa were husband wife and ever since have been and now are husband and wife.

IV.

That on the 1st day of August, A. D. 1941, Silvo Questa for plaintiffs applied to Frank Hassett, Esq., who was then and there the duly authorized agent of the defendant, [2] for insurance in the sum of Seventy-five Hundred Dollars (\$7500.00) against loss or damage by fire upon a large barn situated on the Glendale Ranch in Washoe County, Nevada, the property of the said plaintiffs and the defendant, by their said agent, in consideration of the premises, which was to be the same rate as all other insurance held by plaintiffs with defendant to be paid defendant by plaintiffs, agreed to insure the plaintiffs on the said large barn on plaintiffs' Glendale Ranch from the 1st day of August, A. D. 1941 for a space of three years and to execute and deliver to plaintiffs within a reasonable and convenient time their policy of insurance therefore in the usual form of policy issued by them insuring said plaintiffs' barn for the sum of Seventy-five Hundred Dollars (\$7500.00) against loss and damage by fire.

V.

That thereafter, to wit, on about September 20, 1941 the said barn was totally destroyed by fire, whereby the plaintiffs sustained loss to the amount of Seventy-five Hundred Dollars (\$7500.00).

VI.

That the defendant neglected and refused and still refuses, to execute and deliver their said policy of insurance in writing to the plaintiffs in pursuance to said agreement.

VII.

That the plaintiffs have duly performed all of the conditions of said agreement and insurance on their part to be performed and on or about the 24th day of September, 1941, notified the defendant of said loss, and on the 8th day of January, A. D. 1942 duly furnished the defendant with proofs of loss.

VIII.

That although more than fifty (50) days have [3] elapsed since said proofs were furnished, no part of said loss has been paid, and the whole thereof remains due and payable to the plaintiffs, the defendant having rejected the said claim in writing.

IX.

That the usual form of policy issued by the defendant agrees, among other things, as follows:

“This company shall not be held to have waived any provision or condition of this policy or any forfeiture thereof by any requirement, act, or proceeding on its part relating to the appraisal or to any examination herein provided for; and the loss shall not become payable until sixty days after the notice, ascertainment, estimate, and satisfactory proof of the

loss herein required have been received by this company, including an award by appraisers when appraisal has been required.”

That in pursuance thereto defendant took a deposition of plaintiffs and reduced same to writing. That the said defendant waived the said sixty days time by their letter dated February 20, 1942 which denies the existence of any liability or insurance on their part express or implied on the barn aforesaid of plaintiffs.

Wherefore, plaintiffs pray judgment against the defendant.

1. That the defendant corporation deliver its policy of insurance to the plaintiffs in the sum of Seventy-five Hundred Dollars (\$7500.00) on that certain large barn which was situate on the Glendale Ranch of plaintiffs.

2. That the plaintiffs are entitled to the sum of Seventy-five Hundred Dollars (\$7500.00) provided for in said policy.

3. That the plaintiffs be given judgment for their costs.

4. That the plaintiffs be given judgment for all other proper relief in the premises to which they may be entitled. [4]

WILLIAM S. BOYLE

Attorney for Plaintiffs

204 Gazette Bldg.,

Reno, Washoe Co., Nevada.

(Duly Verified.)

[Endorsed]: Filed Feb. 27, 1942. [5]

[Title of District Court and Cause.]

ANSWER TO COMPLAINT

Now Comes defendant above named and answers the complaint of plaintiffs herein, as follows:

I.

Defendant denies each and every allegation contained in paragraph IV of the complaint, except that defendant admits that Frank Hassett was and is a duly authorized agent of defendant.

II.

Defendant alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph V of the complaint, and therefore denies said allegations.

III.

Defendant admits the allegations of paragraph VI of the complaint, except that defendant denies that there was any neglect on its part or that its refusal to execute or deliver any policy of insurance to plaintiffs was contrary to said or any agreement. [7]

IV.

Defendant admits that on or about September 24, 1941, plaintiffs notified defendant that the barn referred to in the complaint was burned on or about September 20, 1941, and that on or about January 8, 1942, plaintiffs furnished defendant with a document entitled "Proof of Loss"; defendant denies

each and every other allegation contained in paragraph VII of the complaint.

V.

Defendant admits that it has paid nothing to plaintiffs and has rejected their claim in writing; defendant denies that the whole or any part of said or any loss or any amount whatever remains or is or at any time was due or payable to plaintiffs or either of them.

VI.

Defendant admits and alleges that on January 26, 1942, plaintiffs voluntarily submitted to an examination under oath by defendant, pursuant to the terms of a "Non-Waiver Agreement" dated January 26, 1942, a copy of which is attached hereto, marked Exhibit "A" and made a part hereof; and admits and alleges that on February 20, 1942, defendant wrote and sent a letter to plaintiffs' attorney, a copy of which is attached hereto, marked Exhibit "B" and made a part hereof; defendant alleges that the usual form of policy insuring against fire issued by defendant in the State of Nevada is as prescribed by the "Nevada Insurance Act" (article 15, section 117) which adopts a standard fire policy for use in the State of Nevada; defendant denies each and every allegation contained in paragraph IX of the complaint not hereinabove in this paragraph of the answer expressly admitted. [8]

Wherefore, defendant prays that plaintiffs take nothing by their complaint herein, and that de-

fendant be dismissed hence with its costs of suit herein incurred.

LONG & LEVIT
HAWKINS, RHODES &
HAWKINS

By BERT W. LEVIT

Service of the above and foregoing "Answer to Complaint" by copy, is hereby admitted this 7th day of April, 1942.

WILLIAM S. BOYLE
Attorney for Plaintiff

(Duly Verified.)

[Endorsed]: Filed April 7, 1942. [9]

EXHIBIT "A"

NON-WAIVER AGREEMENT

This Agreement entered into at Reno, Nevada, on this 26th day of January, 1942, by and between Silvo Questa and Jennie Questa (First parties) and Milwaukee Mechanics' Insurance Company (second party),

Witnesseth:

Whereas, first parties have served upon second party a document entitled Amended Proof of Loss, making claim on second party for loss by fire to a certain barn under an alleged agreement to insure the same, said fire being stated therein to have occurred on or about midnight September 21, 1941; and

Whereas, second party has not and does not admit the issuance of any insurance upon said barn or the making or entering into by it or on its behalf of any agreement to insure the same or to issue a policy of insurance upon the same; and

Whereas, it is to the mutual advantage of all parties hereto to permit second party to investigate all the facts and circumstances concerning the alleged agreement to insure, the alleged fire and claim, and to ascertain the value of the said barn and the loss and damage, if any, thereto, without delay;

Now Therefore It Is Hereby Agreed by and between the parties hereto as follows:

1. Second party shall be free (but not obligated) to investigate and make any inquiry it may see fit, and to take such steps as it may be advised, with respect to any of the matters aforesaid.

2. First parties agree to furnish to second party all information within their ability to furnish and to submit to examination under oath, with respect to the foregoing matters.

3. Anything done or to be done in connection with any of the matters aforesaid shall not constitute an admission of the existence of any agreement to insure the said property or of the existence of any insurance upon the said property, or of any liability whatever on the part of second party for the alleged loss or damage to said property; nor shall second party thereby be deemed or held to

have waived, invalidated, forfeited or modified any legal rights available to it should it be ultimately determined that insurance of said barn by second party in fact exists.

In Witness Whereof, the parties hereto have hereunto set their hands the day and year first above written.

(Signed) SILVO QUESTA

(Signed) JENNIE QUESTA

First Parties

MILWAUKEE MECHANICS'
INSURANCE COMPANY

(Signed) By BERT W. LEVIT

Second Party [11]

EXHIBIT "B"

Law Offices
Long & Levit
Merchants Exchange
San Francisco

Percy V. Long
Bert W. Levit
William H. Levit

February 20, 1942.

William S. Boyle, Esq.,
Attorney at Law,
Gazette Building,
Reno, Nevada.

Re: File #1552—Silvo Questa, Reno, Nevada;
Fire Loss.

Dear Mr. Boyle:

Please be advised that our client Milwaukee Mechanics' Insurance Company denies that it is under any liability whatever to your clients Silvo Questa and Jennie Questa, or to either of them, for loss by fire to their barn occurring on or about September 21, 1941. Said Insurance Company expressly denies the existence of any contract of insurance, written or oral, between it and your clients or either of them, at the time of said fire or at any other time.

Yours very truly,

(Signed) LONG & LEVIT.

BWL:MC [12]

[Title of District Court and Cause.]

MINUTES OF COURT

Tuesday, June 23, 1942

The trial of this case coming on regularly this day at Reno, Nevada, by request of counsel for the respective parties, and without a jury—the services of a jury having been waived—Wm. S. Boyle, Esq., appearing for and on behalf of the plaintiffs, and Messrs. Bert W. Levit and Bryce Rhodes for the defendant. Mrs. Marie D. McIntyre, official reporter, is called by counsel for the respective parties to report this trial on the usual terms. Both parties ready. S. Questa is duly sworn and testifies for the plaintiffs, during which a small photograph of a barn is offered in evidence, admitted and ordered marked Plffs'. Ex. No. "A"; also an enlargement of the small photo of barn is offered, admitted and ordered marked Plffs'. Ex. No. "A-1"; also a bundle of blue prints of barn is marked Plffs'. Ex. No. "B" for Identification; also an insurance policy is offered, admitted and ordered marked Plffs'. Ex. No. "C"; and also a cancelled check for \$75.00 is offered, admitted and ordered marked Plffs'. Ex. No. "D". Mrs. Jennie Questa is duly sworn and testifies for the plaintiffs. S. L. Williams is duly sworn and testifies for the plaintiffs, during which Mr. Boyle offers in evidence a 1 sheet "Specification for Barn", which is admitted and ordered marked Plffs'. Ex. No. "E"; and also offers in evidence Plffs'. [13] Ex. No.

“B” for Identification, which is admitted and ordered marked Plffs.’ Ex. No. “B”. Mr. Levit moves to strike the testimony of this witness and Plffs.’ Exhibits Nos. “B” and “E”, which will later be taken under consideration by the Court. Mr. Boyle offers in evidence letter, dated February 20, 1942 from Long & Levit to Wm. S. Boyle, which is admitted and ordered marked Plffs.’ Ex. No. “F”; and also offers “Proof of Loss” and “Amended Proof of Loss”, which are admitted and ordered marked Plffs.’ Ex. No. “G”. The plaintiffs rest. Mr. Levit offers in evidence a letter, dated Jan. 8, 1942 from W. S. Boyle to Frank Hassett, which is admitted and marked Deft’s. Ex. No. 1; also offers letter, dated Jan. 13, 1942 from Frank Hassett Inc. to Wm. S. Boyle, which is admitted and ordered marked Deft’s. Ex. No. 2; and also offers a “Non waiver Agreement”, which is admitted and ordered marked Deft’s. Ex. No. 3. Frank Hassett is duly sworn and testifies for the defendant, during which a “Covering Note”, dated Mar. 25, 1941 is offered in evidence, admitted and ordered marked Deft’s. Ex. No. 4. At 4:15 o’clock P. M. a recess is declared and the further trial herein continued to tomorrow morning at ten o’clock. [14]

[Title of District Court and Cause.]

MINUTES OF COURT

Wednesday, June 24, 1942

The further trial of this case coming on regularly this day, the same parties, counsel and official reporter being present. S. L. Williams takes the witness stand for further re-direct examination by Mr. Boyle. Miss Lena Porta is duly sworn and testifies for the defendant. Frank Hassett takes the witness stand for re-direct examination. James V. Corica is duly sworn and testifies for the defendant. Howard Parrish is duly sworn and testifies for the defendant. Mr. Levit offers in evidence original "Covering Note" which is admitted subject to objection, same is withdrawn and photostat copy is substituted and marked Deft's. Ex. No. 5. A copy of letter, dated July 3, 1941 from Mrs. Cupit to Mr. Questa is marked Plffs.' Ex. No. "H" for Identification. John F. Hickok is duly sworn and testifies for the defendant. S. Questa is recalled to the witness stand for further cross-examination by Mr. Levit, following which the defendant rests. Jennie Questa and S. Questa both testify in rebuttal for the plaintiffs. A copy of Plffs.' Ex. No. "H" for Identification, signed by both Mrs. Cupit and Silvio Questa, together with Plffs.' Ex. No. "H" for Identification, both fastened together, offered in evidence and marked Plffs.' Ex. No. "H". The plaintiffs rest. Howard Parrish testifies in rebuttal. [15] The defendant rests. Both parties

rest. It Is Ordered that this trial be transcribed, each side to pay one-half of the costs therefor. It Is Ordered that this case be submitted on briefs, the plaintiffs being allowed 10 days after the filing of transcript to file opening brief, defendant 15 days thereafter to file answering brief, and plaintiffs 10 days thereafter to file reply brief. Counsel state they may desire oral argument. * * * [16]

[Title of District Court and Cause.]

MINUTES OF COURT

Saturday, September 26, 1942

This being the time heretofore fixed for hearing oral arguments on the merits, and the same coming on regularly this day, Wm. S. Boyle, Esq., appearing for and on behalf of the plaintiff, and Bert W. Levit, Esq., of counsel, for the defendant. Arguments by counsel for the respective parties. Counsel are permitted to and including October 5, 1942 to file additional briefs, following which this matter will stand submitted. [17]

[Title of District Court and Cause.]

MINUTES OF COURT

Thursday, October 29, 1942

This case having heretofore been tried, submitted on briefs and by the Court taken under advisement, It Is Ordered that plaintiffs' be, and they

hereby are, granted judgment against defendant in the sum of \$4000.00, together with costs of suit. It Is Further Ordered that the attorney for plaintiffs submit proposed findings of fact, conclusions of law and form of judgment and serve copy thereof upon attorneys for the defendant. The Court now files Memorandum Decision. [18]

[Title of District Court and Cause.]

MEMORANDUM DECISION.

This case having been submitted upon the transcript of testimony and briefs filed on behalf of the respective parties and the Court being fully advised in the premises, it is the conclusion of the Court that the evidence is sufficient to establish an oral contract of fire insurance upon Plaintiff's barn which later was destroyed by fire and that the amount of insurance at that time, covered by such oral contract, was a sum not less than Four Thousand (\$4000.00) Dollars, which amount the Court finds to be the amount so covered by such oral contract and that the damage sustained by Plaintiff, by reason of said fire, was not less than such amount, wherefore, it is

Ordered: That Plaintiffs be, and they hereby are, granted judgment against Defendant in the sum of Four Thousand (\$4000.00) Dollars, together with costs of suit.

It Is Further Ordered: That the attorney for Plaintiffs submit proposed findings of fact, conclu-

sions of law and form of judgment and serve copy thereof upon attorneys for Defendant.

Done in open Court this 29th day of October, 1942.

FRANK H. NORCROSS,
District Judge.

[Endorsed]: Filed Oct. 29, 1942. [19]

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS
OF LAW

The above-entitled cause having come on regularly to be heard before the above-entitled court on June 2, 1942 and June 24, 1942, the plaintiff appearing in person and by their attorney William S. Boyle, Esq. and the defendant corporation appearing by its attorneys Long and Levit by Bert W. Levit Esq. of San Francisco and Hawkins, Rhodes and Hawkins, by Bryce Rhodes, Esq. The plaintiffs offered evidence both oral and documentary in support of their complaint and the defendant corporation offered evidence both oral and documentary in support of its answer and both sides rested and the matter was submitted to the court after briefs had been filed and oral arguments presented to the court on September 26, 1942. The court having been fully advised on all phases of the matter by respective counsel and now, after due deliberation, the court finds the following facts:

I.

That the defendant, Milwaukee Mechanics' Insurance Company is a corporation duly organized and existing under and by virtue of the laws of the State of Wisconsin and licensed to do business within the State of Nevada.

II.

That the plaintiffs are citizens of the State of [20] Nevada and the defendant is a citizen of the State of Wisconsin; that the amount in controversy exceeds, exclusive of interest and costs, the sum of Three Thousand Dollars.

III.

That on August 1st, 1941 and for a long time prior thereto and at all times mentioned in this complaint the plaintiffs, Silvo Questa and Jennie Questa were husband and wife and ever since have been and now are husband and wife.

IV.

That on the 1st day of August, A. D. 1941, Silvo Questa for plaintiffs applied to Frank Hassett, Esq., who was then and there the duly authorized agent of the defendant, for insurance in the sum of four thousand dollars against loss or damage by fire upon a large barn situated on the Glendale Ranch in Washoe County, Nevada, the property of the said plaintiffs and the defendant, by their said agent, in consideration of the premises,

which was to be the same rate as all other insurance held by plaintiffs with defendant to be paid defendant by plaintiffs, agreed to insure the plaintiffs on the said large barn on plaintiffs' Glendale Ranch from the 1st day of August, A. D. 1941 for a space of three years and to execute and deliver to plaintiffs within a reasonable and convenient time their policy of insurance therefore in the usual form of policy issued by them insuring said plaintiffs' barn for the sum of four thousand dollars against loss and damage by fire.

V.

That thereafter, to-wit, on about September 20, 1941 the said barn was totally destroyed by fire, whereby the plaintiffs sustained loss to the amount of four thousand dollars. [21]

VI.

That the defendant neglected and refused and still refuses, to execute and deliver their said policy of insurance in writing to the plaintiffs in pursuance to said agreement.

VII.

That the plaintiffs have duly performed all of the conditions of said agreement and insurance on their part to be performed and on or about the 24th day of September, 1941, notified the defendant of said loss, and on the 8th day of January, A. D. 1942 duly furnished the defendant with proofs of loss.

From the Foregoing Facts the Court Legally Concludes:

That *at* an oral contract of fire insurance upon plaintiffs barn existed which was later destroyed by fire and that the amount of insurance at that time, covered by such oral contract was a sum not less than four thousand dollars which amount the court concludes to be the amount so covered by such oral contract and that the damage sustained by Plaintiff, by reason of said fire, was not less than such amount.

That the plaintiff is entitled to judgment against defendant Milwaukee Mechanics Insurance Company a corporation in the sum of four thousand dollars together with cost of suit.

Done in open court this the 23d day of November, A. D. 1942.

/S/ FRANK H. NORCROSS,
District Judge.

Service of a copy hereof admitted this 2nd day of Nov., 1942.

HAWKINS, RHODES &
HAWKINS,
By BRYCE RHODES.

[Endorsed]: Filed Nov. 23, 1942. [22]

In the District Court of the United States in and
for the District of Nevada

No. 199

SILVO QUESTA and JENNIE QUESTA, hus-
band and wife,

Plaintiffs,

vs.

MILWAUKEE MECHANICS' INSURANCE
COMPANY, a corporation,

Defendant.

JUDGMENT

The above-entitled action coming on regularly to be heard before the above court on June 23, 1942 and June 24, 1942 William S. Boyle, Esq. appearing *plaintiffs* and Long and Levit and Hawkins, Rhodes and Hawkins attorneys at law appearing for defendant corporation, and evidence having been introduced by each of the respective parties, and the said cause having been submitted for decision, and the court being fully advised, having rendered its findings of fact and conclusions of law herein, wherein judgment is ordered in favor of plaintiff and against the defendant:

Now, therefore, by reason of the law and findings aforesaid:

It is ordered, adjudged, and decreed:

That an oral contract of fire insurance existed upon plaintiffs barn which was later destroyed by

fire and that the amount of insurance at that time, covered by such oral contract was a sum not less than four thousand dollars and that the damage sustained by plaintiff, by reason of said fire, was not less than such amount:

That the plaintiff have judgment against defendant Milwaukee Mechanics Insurance Co. a corporation in the sum of four thousand dollars with cost of court herein taxed at [23] \$115.30.

Done in open court this 23d day of November, A. D. 1942.

Costs allowed and taxed in sum of \$112.30.

/s/ FRANK H. NORCROSS,

District Judge.

O. E. BENHAM,

Clerk.

By O. F. PRATT,

Deputy.

Service of a copy hereof admitted this 2nd day of Nov. 1942.

HAWKINS, RHODES &

HAWKINS.

By BRYCE RHODES.

[Endorsed]: Filed Nov. 23, 1942. [24]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is Hereby Given that Milwaukee Mechanics' Insurance Company, a corporation, defendant above named, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit from the final judgment entered in this action on or about November 23, 1942.

LONG & LEVIT

Merchants Exchange, San
Francisco

HAWKINS, RHODES &
HAWKINS

153 N. Virginia Street, Reno

By BERT W. LEVIT

Attorneys for Defendant.

Receipt of a copy admitted this 4th day of January, 1943.

WILLIAM S. BOYLE

Attorney for Plaintiffs.

[Endorsed]: Filed Jan. 5. 1943. [25]

[Title of District Court and Cause.]

APPELLANT'S DESIGNATION OF
CONTENTS OF RECORD ON APPEAL

Milwaukee Mechanics' Insurance Company, a corporation, defendant and appellant herein, hereby

designates the complete record and all the proceedings and evidence in the above entitled action for inclusion in the record on appeal herein.

Dated: January 2, 1943.

LONG & LEVIT

HAWKINS, RHODES &

HAWKINS

By BERT W. LEVIT

Attorneys for Defendant.

Receipt of a copy admitted this 4th day of January, 1943.

WILLIAM S. BOYLE

Attorney for Plaintiffs.

[Endorsed]: Filed Jan. 5, 1943. [26]

[Title of District Court and Cause.]

STIPULATION RE TRANSCRIPT AND
EXHIBITS

It Is Hereby Stipulated that defendant and appellant need not file two copies of the reporter's transcript of the evidence and proceedings at the trial (as required by Rule 75, b, of the Rules of Civil Procedure); one copy thereof shall suffice.

It Is Further Stipulated that, in order to save expense, the Clerk of the District Court need not copy the exhibits introduced or offered at the trial, but may transmit the original exhibits as a part of

the record on appeal to the Circuit Court of Appeals.

WILLIAM S. BOYLE

Attorney for Plaintiffs.

LONG & LEVIT

HAWKINS, RHODES &

HAWKINS

By BERT W. LEVIT

Attorneys for Defendant.

So Ordered:

FRANK H. NORCROSS

District Judge.

[Endorsed]: Filed Jan. 5, 1943. [27]

[Title of District Court and Cause.]

SUPERSEDEAS BOND

Know All Men By These *Present*, That we, Milwaukee Mechanics' Insurance Company, a corporation, as Principal and Commercial Casualty Insurance Company, a corporation organized and existing under the laws of the State of New Jersey and duly authorized to act as Surety with its principal office located in the City of Newark, as Surety, are held and firmly bound unto Silvo Questa and Jennie Questa, husband and wife, in the full and just sum of Five Thousand Dollars (\$5,000.00) to be paid to the said Silvo Questa and Jennie Questa, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we

bind ourselves, our successors and assigns, jointly and severally, by these presents.

Sealed with our seals and dated this 31st day of December in the year of our Lord One Thousand Nine Hundred and Forty-two.

Whereas, lately at a District Court of the United States for the District of Nevada in a suit depending in said Court, between Silvo Questa and Jennie Questa, husband and wife, as Plaintiffs and Milwaukee Mechanics' Insurance Company, a corporation as Defendant, a judgment was rendered against the said Milwaukee Mechanics' Insurance Company and the said [28] Milwaukee Mechanics' Insurance Company having filed or being about to file in said Court a notice of appeal to reverse the judgment in the aforesaid suit, Silvo Questa and Jennie Questa, husband and wife, as Plaintiffs versus Milwaukee Mechanics' Insurance Company, a corporation as Defendant, on appeal to United States Circuit Court of Appeals for the Ninth Circuit, at a session of said Circuit Court of Appeals to be holden at San Francisco, in the State of California.

Now, the condition of the above obligation is such, That if the said Milwaukee Mechanics' Insurance Company shall prosecute its appeal to effect, and satisfy the judgment in full, together with costs, interest and damages for delay, if for any reason the appeal is dismissed or if the judgment is affirmed, and to satisfy in full such modification of the judgment and such costs, interest and damages as the appellate court may adjudge and award, if Milwaukee Mechanics' Insurance Company fails to

make its plea good, then the above obligation to be void; else to remain in full force and virtue.

MILWAUKEE MECHANICS'
INSURANCE COMPANY

By FRED W. SULLIVAN
Vice President

[Corporate Seal]

Attest: F. E. CHADWICK,
Secretary.

COMMERCIAL CASUALTY
INSURANCE COMPANY

By D. W. PORTER
Attorney-in-fact

[Corporate Seal]

Form of bond and sufficiency of surety approved.

WILLIAM S. BOYLE
Attorney for Plaintiffs
FRANK H. NORCROSS
District Judge

(Duly Verified.)

[Endorsed]: Filed Jan. 5, 1943. [29]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK,
U. S. DISTRICT COURT

United States of America,
District of Nevada—ss.

I, O. E. Benham, Clerk of the District Court of

the United States for the District of Nevada, do hereby certify that I am custodian of the records, papers and files of the said United States District Court for the District of Nevada, including the records, papers and files in the case of Silvo Questa and Jennie Questa, husband and wife, Plaintiffs, vs. Milwaukee Mechanics' Insurance Company, a corporation, Defendant, said case being No. 199 on the civil docket of said Court.

I further certify that the attached transcript, consisting of 34 typewritten pages numbered from 1 to 34, inclusive, contains a full, true and correct transcript of the proceedings in said case and of all papers filed therein, together with the endorsements of filing thereon, as set forth in "Appellant's Designation of Contents of Record on Appeal" filed in said case and made a part of the transcript attached hereto, as the same appear from the originals [32] of record and on file in my office as such Clerk in Carson City, State and District aforesaid.

And I further certify that accompanying this record, in accordance with Stipulation and Order filed and entered January 5, 1943, are all the original exhibits, both plaintiffs' and defendant's, filed in the aforesaid cause; same being listed as follows:

Plaintiffs' Exhibits:

- No. A—Small photograph of barn;
- No. A-1—Enlarged photograph of barn;
- No. B—Blue prints of barn;
- No. C—Milwaukee Mechanics' Insurance Company fire insurance policy;

No. D—Cancelled check of Jennie Questa payable to Frank Hassett Inc. for \$75.00;

No. E—Specifications for barn;

No. F—Letter from Long & Levit to William S. Boyle;

No. G—Proof of Loss and Amended Proof of Loss;

No. H—Copy of letter, dated July 3, 1941, to Silvo Questa from Monaei L. Cupit, signed by Monaei L. Cupit, and another copy of the same letter signed by Monaei L. Cupit and Silvo Questa.

Defendant's Exhibits:

No. 1—Letter from William S. Boyle to Frank Hassett;

No. 2—Letter from Frank Hassett to William S. Boyle;

No. 3—Non-Waiver Agreement;

No. 4—Covering Note;

No. 5—Photostatic copy of Covering Note.

And I further certify that accompanying this record, and pursuant to Stipulation and Order filed January 5, 1943, is the original Transcript of Testimony filed in the aforesaid cause on July 3, 1942.

And I further certify that the cost of preparing and [33] certifying to said record, amounting to \$11.75, has been paid to me by Messrs. Long & Levit, of counsel for the appellant herein.

Witness my hand and the seal of said United States District Court this 3d day of February, 1943.

[Seal]

O. E. BENHAM

Clerk, U. S. District Court [34]

[Title of District Court and Cause.]

TRANSCRIPT OF TESTIMONY

TRIAL

Be It Remembered, That the above-entitled matter came on regularly for trial before the Court, without a jury, at Reno, Nevada, on the 23rd day of June, 1942, at 10:00 o'clock A. M., Hon. Frank H. Norcross, Judge, presiding.

Appearances:

William S. Boyle, Esq.,

Attorney for Plaintiffs

Long & Levit, By Bert W. Levit, Esq., and

Hawkins, Rhodes & Hawkins,

By Bryce Rhodes, Esq.,

Attorneys for Defendant.

The following proceedings were had:

Mr. Boyle: May it please the Court, do you desire the pleadings be read?

The Court: No, I have read the pleadings recently.

MR. SILVO QUESTA,

being first duly sworn, testified as follows:

Direct Examination

By Mr. Boyle:

Q. What is your name??

A. Silvo Questa. [1*]

(Testimony of Silvo Questa.)

Q. Where do you reside?

A. R. F. D. No. 2, Box 102, Glendale, Nevada.

Q. How long have you lived there?

A. Since 1919.

Q. Are you a citizen of Nevada? A. Yes.

Q. Where is the defendant a citizen of, if you know?
A. Wisconsin.

Q. Who is Jennie Questa? A. My wife.

Q. Is she also a citizen of Nevada?

A. Yes.

Q. How long have you and your wife lived in Nevada?
A. Practically all my life.

Q. Were you husband and wife during August, 1941?
A. Yes.

Q. What, to your recollection, occurred on August 1, 1941?

A. I applied to Frank Hassett, who was agent for the Milwaukee Mechanics' Insurance Company, for insurance of \$7500.00 against loss or damage by fire on a large barn situated at Glendale ranch, Washoe County, Nevada, belonging to me and my wife.

Q. Where did you meet Frank Hassett, the agent?

A. I called up his office and arranged to meet him but I happened to meet him on the street before he got to his office.

Q. Did you have any conversation with him at the time you met him? A. Yes.

Q. Who were present?

(Testimony of Silvo Questa.)

A. Hassett and myself. [2]

Q. Where was the meeting place?

A. On Virginia Street near Colbrant's.

Q. What time was it?

A. Between 11:30 and 12 o'clock noon.

Q. What was said, if anything?

A. I asked Mr. Hassett to insure the barn for three years for \$7500.00 in the usual form with the usual policy which we made on other properties.

Q. Do you remember any other conversation at the time?

A. Yes, I asked him concerning Brown Motors Company, from whom I purchased a station wagon, International, about insurance on the car. He said he had insured the car.

Q. What further do you recollect?

A. Mr. Hassett assured me that he would insure the barn and that he would come down to the ranch to see the barn. I believed it should carry full insurance of \$7500.00. Mr. Hassett said he would issue the policy for \$7500.00 and he would deliver me the policy with the policy of the car.

Q. Did Mr. Hassett go to the ranch?

A. Yes, he went to the ranch in my absence and spoke to my wife.

Q. To your knowledge did he see the barn?

A. He couldn't help but see it.

Mr. Levit: I move that be stricken as not responsive.

Mr. Boyle: That is responsive.

(Testimony of Silvo Questa.)

Mr. Levit: It is hearsay.

The Court: Read the last question.

(Question read.)

Mr. Boyle: It would have to be within his knowledge so [3] therefore it wouldn't be hearsay.

The Court: He could state how the barn was located and whether anybody on the ranch could see it.

Q. Kindly explain that, Mr. Questa.

A. He stopped at the house and the barn is about a hundred yards from the house and it is a big barn, you couldn't help but see it. The barn was the biggest building at the ranch.

Q. How far from the house is it?

A. About a hundred yards.

Q. Situated from the house, what is its position?

A. Plain view.

Q. What, if anything, was done about insurance on the visit of Mr. Hassett?

A. He spoke to my wife and visited my home and then he left.

Mr. Levit: Objected to as hearsay.

Mr. Boyle: There is nothing hearsay about that. He said he spoke to his wife. It is not hearsay if it is proven upon his testimony further on that he had conversations with Mr. Hassett whether or not he had gone down to the ranch.

The Court: Whether he spoke to the wife, unless he was present, he wouldn't know that, of course, of his own knowledge. He might conclude that.

(Testimony of Silvo Questa.)

Q. When did you hear from Mr. Hassett again, if you ever did?

A. I met him on the street, on Virginia Street, about one o'clock in the afternoon about the middle of August and I again spoke to him about the insurance policy. All he said was that he would take care of it. [4]

Q. Did you see him at any time thereafter?

A. I saw him about 7:30 in the evening along about the last of August or the first part of September, at the Riverside bar.

Q. Did you speak to him? A. Yes.

Q. Do you remember what the conversation was and where he was sitting, if you recollect.

A. He was sitting at a table with some people and as I walked by I asked him about the policy.

Q. What, if anything, did he say?

A. He says, "I will take care of it" and "I will come down."

Q. What, if anything, occurred, if you recollect, after meeting Mr. Hassett at the Riverside bar?

A. On September 20th the barn burned down and was nearly destroyed.

Q. After the barn burned down did you see Mr. Hassett or communicate with him? A. Yes.

Q. Where?

A. At his office at the Heitman Building.

Q. Who were present?

A. Hassett and myself.

Q. What time was it?

(Testimony of Silvo Questa.)

A. It was early in the afternoon about four days after the fire, for I expected Hassett to show up at the ranch.

Q. What was the conversation had between you and Mr. Hassett?

A. I asked Mr. Hassett if he had my policy of insurance. I told him that the barn had burned down. Mr. Hassett replied for me not [5] to worry, that it was his worry from now on, and at the same time he put his hand to his head and said, "Oh Jesus, it is all my fault. Let me do the worrying. I have been so busy running back and forth to Las Vegas, Nevada."

Q. Did you have any other business with him thereafter? A. Yes.

Q. What was it?

A. I insured a box stall barn and saddle room and I called his attention about the insurance policy on the stone house.

Q. Did he deliver the policies? A. Yes.

Q. And after he delivered the last policies, if anything, what occurred about the barn?

A. I insured some onions with him after the barn burned.

Q. Did Mr. Hassett mention the barn insurance thereafter? A. Yes.

Q. When? A. After New Years.

Q. Was that in 1942? A. 1942.

Q. Where? A. In his office.

Q. What was said?

(Testimony of Silvo Questa.)

A. He said that he had talked to his boss and his boss said there was no insurance.

Q. What, if anything, further was said at that time?

A. I said, "Frank, if you think you are going to pull that over on me you are badly mistaken." I told him that I would advertise [6] him, that he had no business doing business in Nevada, that he belonged in California. Hassett then told me that he would take me down to California and pay all my expenses if I would go with him and see his boss.

Q. Did you see Mr. Hassett after that occasion?

A. Yes.

Q. When? A. On January 26th.

Q. What year was that?

A. 1942. He told me to be patient for three days.

Q. Did you hear anything further from him?

A. Yes, the last part of January. He told me that he had told his company to charge it up to advertisement and to pay it.

Q. And what further was said?

A. He said in twenty-five years he has been with the company he had learned something, that hereafter when he got an order he would write it down. He also said it was an order and if he had to get up on the witness stand he would admit it was an order.

Q. I will show you a picture and ask you if you are familiar with it? A. Yes.

(Testimony of Silvo Questa.)

Q. What is that picture?

A. Picture of the barn.

Q. Do you know who took it?

A. No, I do not know who took the picture?

Q. Is that an exact reproduction of the barn?

A. That is right.

Q. And you are positive that is a correct picture of the barn? [7] A. Yes.

Q. How often have you seen that barn?

A. Ever since 1919.

Q. At the time that picture was taken, could you tell us the date or approximate time it was taken?

A. I think it was taken around the summer of 1940.

Mr. Boyle: Your Honor, at this time I would like to offer this picture in evidence and request it be marked Plaintiff's Exhibit A.

The Court: It may be admitted.

Q. I show you a picture and ask you if that is the same picture enlarged? A. Yes.

Q. And it is an exact reproduction of the other picture, but an enlargement, by Curtis & Company?

A. Yes.

Mr. Boyle: We could bring Mr. Curtis here. We ask it be admitted in evidence as the same exhibit with this other one.

The Clerk: The same letter A?

Mr. Levit: No objection.

The Court: It may be admitted.

(Testimony of Silvo Questa.)

Clerk: I will mark that A-1.

Q. Now, Mr. Questa, were you familiar with the construction of the barn? A. Yes.

Q. Kindly describe it.

A. Well, it was an old barn, built before 1919, out of 12 x 12 timber, ironed and braced and it was built out of old mill tim- [8] bers from Virginia City and was in excellent condition.

Q. When you say it was in excellent condition, describe, clarify it, or state to the Court why you say it was in excellent condition.

Mr. Levit: When did he say the barn was built?

Mr. Boyle: Before 1919.

A. Well, I have always kept it up and I had all cement pillars put under each timber and had it leveled.

Q. When you say you had cement pillars, you mean piers put under the columns, is that what you mean? A. That is right.

Q. Describe those piers, what were they made of? A. Cement.

Q. Concrete? A. That is right.

Q. What were the dimensions, if you recollect?

A. Oh, about 5x5.

Q. How many feet thick?

A. Oh, about eight feet apart.

Q. I mean thick?

A. Oh, they were 2½ to 3½ feet thick.

Q. Were they or not originally in the barn or with the barn? A. No, I had them put in.

(Testimony of Silvo Questa.)

Q. When did you have them put in?

A. I had them put in a few years back, about three years back.

Q. How many did you have put in?

A. All the way under.

Q. But how many? There must have been a certain number. Do you [9] recollect? Take a look at that and refresh your mind if you can.

A. There was forty.

Q. Of the dimensions that you have described?

A. That is right.

Q. To what extent was the barn renovated? At that time that you mention about putting in these piers, if you recollect, or repaired or fixed up?

A. Well, I don't understand it.

Q. What work did you do at that time? Explain to the Court just what you did toward—

A. I took out all the floor inside and the stalls and had this put in and raised up and leveled up.

Q. Did you hire a carpenter to do it or did you do it yourself?

A. No, I hired a carpenter and some men.

Q. Was it a cement floor or wooden floor?

A. It was wood floor. I took the wood floor out.

Q. How long have you been in the ranching business? A. All my life.

Q. And are you familiar with barns?

A. Yes.

Q. Did that particular barn leak or anything pertaining to construction? A. In one corner.

(Testimony of Silvo Questa.)

Q. Had it leaked before since 1919?

A. No.

Q. Are you familiar with the value of the barn?

A. Yes.

Q. And what would you value the barn at? [10]

A. Fifteen thousand dollars.

Q. Do you mean it would cost that to replace it?

A. Yes.

Mr. Levit: I move the witness's answer be stricken because the replacement cost, your Honor, is not the value of the barn. The witness is not qualified to testify as to replacement cost. If your Honor feels he is qualified to testify as to value, we have no objection to that, but by his testimony now he has indicated the figure he gave us was in no sense a figure of value and he has not been qualified with regard to replacement costs and therefore I move his answer be stricken as to replacement value.

The Court: I will reserve ruling on that. We will take that up later.

Q. Mr. Questa, what was the value that you placed upon the barn about the time that it was destroyed?

Mr. Levit: May I ask for a clarification. When you say——

Mr. Boyle: His estimation he placed upon it, in his own estimation.

A. Fifteen thousand dollars.

Q. What amount of insurance did you request on the barn? A. \$7500.00.

(Testimony of Silvo Questa.)

Mr. Levit: We make the same motion as to the last answer, your Honor.

Q. Now will you kindly describe the fabric of the structure, pertaining to uprights and timbers and girders and other things that made for the construction. Kindly describe. [11]

A. All the timber was 12 x 12 and 10 x 10, ironed and braced under each and every pillar that run up.

Q. Now this particular drawing that I show you, is that a reproduction of the barn? A. Yes.

Q. That is a reproduction as you remember it?

A. Yes.

Q. And is there any doubt in your mind as to any of the sizes of timber, etc. that were placed herein?

A. No. I think that is a perfect reproduction of the barn.

Mr. Boyle: We offer these particular drawings for identification, your Honor. Mr. Levit had the privilege of going over a set of the plans.

Mr. Levit: In the first place I make an objection to the admission of those blueprints.

Mr. Boyle: They are only offered for identification, so there is no use objecting.

Mr. Levit: Then we withdraw the objection, and as far as counsel's statement is concerned, as a matter of fact I had a chance to examine those plans about fifteen minutes. I borrowed a set from counsel and immediately returned them and I wasn't offered—

(Testimony of Silvo Questa.)

Mr. Boyle: It is customary to hand them to counsel. I merely stated you had had the plans in your possession. If there is any question that these are not the plans, we might as well take it up.

Mr. Levit: I don't dispute that, I just wanted the Court to understand the situation. [12]

Mr. Boyle: That is the reason I told the Court you had already seen them, because I didn't hand them to you so you could peruse them.

The Court: I think the Court understands that situation.

Clerk: Plaintiffs' B for identification.

Q. Now, Mr. Questa, when you spoke to Mr. Hassett about the insurance, did you discuss the premium?

A. We both spoke about it being with the same company under the same conditions set forth in those policies issued by the Milwaukee Mechanics' Insurance Company. It was customary for Mr. Hassett to prepare the policies and I would accept them, for I relied upon him.

Q. Were you in position to pay the premiums at all times? A. Yes.

Q. How long had you done business with Mr. Hassett before?

A. Why a month or two before, a couple of months before.

Q. I show you a certain insurance policy and ask you if that is the customary insurance policy acquired from Mr. Hassett and if you acquired that one from Mr. Hassett?

(Testimony of Silvo Questa.)

Mr. Levit: Objected to; so far the witness hasn't testified he customarily acquired any policies from Mr. Hassett. If you want to establish the usual form of policy in Nevada as prescribed by law, we have no objection, but so far the witness hasn't testified how many policies he had from Mr. Hassett.

Mr. Boyle: I think his testimony was to the effect it was customary for Mr. Hassett to prepare the policy and he would accept it. I asked the witness if that is the customary form of [13] policy presented to him by Mr. Hassett.

Mr. Levit: It is conclusion of the witness. Let the witness testify as to how many times this happened before. He states this was the customary form.

Mr. Boyle: If it was the customary form, surely it isn't conclusion. Customary means something carried on as custom.

The Court: He can testify whether that is similar to other policies received.

A. Yes.

Mr. Boyle: I would like to offer this in evidence and request it be marked Plaintiffs' Exhibit—

The Court: Did I clearly understand that he did testify that this is similar?

A. Yes.

The Court: It may be admitted.

Clerk: Plaintiffs' "C".

Q. Now, Mr. Questa, did you at any time get any insurance policies, or policy, from the Milwau-

(Testimony of Silvo Questa.)

kee Mechanics' Insurance Company after the barn burned down? A. Yes.

Q. Did you pay for them? A. Yes.

Q. Why did you do business with the company after the barn burned down?

A. Well, Mr. Hassett assured me that his company—

Mr. Levit: We ask that the answer be stricken. It is irrelevant to any issue in the case, what his motives were.

The Court: I will permit it, subject to statement of [14] conversations and the legal phase we will consider later.

Q. Did you have any conversation at that time about subsequent policies of insurance that you acquired, that you testified to that you had acquired and paid for?

A. He assured me that his company would pay for this loss and that is why I gave him the other business.

Q. Now on or about the month of August, August 15, 1941, that was how long before the barn burned down? A month and five days?

A. A month and five days.

Q. Did you pay Mr. Hassett any money at that time?

A. Yes, he sent his bookkeeper to the ranch and I gave him a check for \$75.00.

Q. Do you remember what that particular check was for?

A. That was for the insurance on the new dwell-

(Testimony of Silvo Questa.)

ing that was being built.

Mr. Boyle: Your Honor, at this time I would like to offer this check in evidence.

Mr. Levit: No objection.

Q. I show you signature and ask you if you are familiar with that signature? A. Yes.

Q. And this is the check that you paid to him?

A. Yes.

Mr. Boyle: We offer it in evidence.

Clerk: Plaintiffs' "D".

PLAINTIFF'S EXHIBIT D

Sparks, Nevada, Aug. 15, 1941.

Pay to the

Order of Frank Hassett Inc. \$75.00

Seventy five and no/100 Dollars.

94-61 Sparks Branch 94-61

First National Bank

in Reno

Sparks, Nevada

Jennie Questa.

(Back of Check)

Pay to the order of 94-2 First & Virg. Branch
94-2 First National Bank of Nevada Frank Hassett,
Inc.

Pay to the order of any bank, banker or trust company or through Reno Clearing House. All prior endorsements guaranteed. Aug. 16, 41 0004. First National Bank of Nevada, First & Virginia Branch, Reno, Nevada. 94-2.

[Endorsed]: Filed June 23, 1942.

(Testimony of Silvo Questa.)

Mr. Boyle: You may cross-examine.

Cross-Examination

By Mr. Levit:

Q. Now, Mr. Questa, this check that has just been introduced in [15] evidence, this Plaintiffs' Exhibit D, for \$75.00, that was a payment on premium, was it not, on the policy that was introduced in evidence as Exhibit "C"?

A. As far as I know it was a check paying for insurance on the new dwelling that was being built.

Q. You identified this policy which is marked Exhibit "C" as being one, I think, that you received from Mr. Hassett, is that right?

A. That I received?

Q. What is this policy that you identified a few minutes ago?

A. That is policy on the new house.

Q. That is the policy then that that check was to pay the premium on, isn't it? A. Yes.

Q. What was the premium on that policy, Mr. Questa? A. It was \$175.00.

Q. And how much is the check for?

A. \$75.00.

Q. Now you paid that on August 15th. The policy was delivered to you when, do you recall?

A. No, I don't recall.

Q. What is the date of the policy?

A. The date of the policy is March, 1941.

Q. March 25, 1941, isn't it? A. Right.

(Testimony of Silvo Questa.)

Q. Now you hadn't paid the balance of the premium on that policy up to August 15, had you?

A. I don't remember. [16]

Q. Well, isn't it a fact that Mr. Hassett sent his bookkeeper out to the ranch to collect a premium of \$175.00 and all you gave him was a check for \$75.00? Don't you remember that?

A. I do not.

Q. But you are not sure but what that might be correct, Mr. Questa, is that right?

A. I don't know.

Q. When did you pay the balance of the premium on that policy?

A. I have been paying premiums to Hassett for quite a while.

Q. What other policies did you get from Mr. Hassett before this one here?

A. For the new dwelling.

Q. That is the one we have already talked about. What others? A. None before.

Q. You got a policy on your car, didn't you?

A. Well yes. That was in July, last part of July.

Q. But the only fire insurance policy that you got was the one introduced in evidence as Exhibit "C", isn't that right? A. At that time?

Q. Well, before the fire, anytime before the fire?

A. Yes.

Q. Well, what did you mean then, Mr. Questa, when you said that the policy was in the form that

(Testimony of Silvo Questa.)

you had been accustomed to receiving from Mr. Hassett? As a matter of fact, that is the only policy in that form that you ever received from Mr. Hassett prior to that fire, is it not?

A. I received that policy of the car.

Q. Was that in the same form? [17]

A. In what form?

Q. In the form that you just identified, the form of Exhibit "C"? A. Yes.

Q. What do you understand by the word "accustomed" or "customary", Mr. Questa?

A. Explain yourself. I do not understand you.

Q. You testified a few moments ago that this policy, which was introduced in evidence, was the same form of policy that you had been accustomed to receiving from Mr. Hassett, didn't you?

A. Yes, I did.

Q. As a matter of fact, you had never received any other policy from Mr. Hassett prior to this fire in that form, had you?

A. This is the only policy I had received in that form that I can remember.

Q. Now do you know what a binder or a cover note is? A. A binder?

Q. Or a cover note? Did you ever hear those expressions?

The Court: A binder or cover note?

Mr. Levit: Well, binder is what it is called, a cover note, they mean the same thing, your Honor.

The Court: On the ranch a binder is something

(Testimony of Silvo Questa.)

we used to use to bind wheat and hay, etc, when I was on the farm.

Mr. Levit: I can assure your Honor I never heard the expression until we heard it here, so perhaps it is a bit confusing.

Q. Let me ask you this, Mr. Questa, you are familiar with the [18] fact, are you not, that when insurance is written up, the policy is not issued until some time later, that it is customary to issue a binder or cover note, slip of paper, evidencing the insurance, before the policy is issued?

A. I do not understand that question.

Q. Well, as a matter of fact, hadn't you ever received anything from Mr. Hassett other than policies themselves? Hadn't you ever received any cover notes from Mr. Hassett?

Mr. Boyle: You are talking about before the fire now?

Mr. Levit: Well, at any time.

Q. Had you never received anything except a formal policy from Mr. Hassett?

A. I have received what do you call that, binder—I do not understand.

Q. Well, as a matter of fact, before you got this particular policy, didn't you receive from Mr. Hassett a cover note, protecting the building against loss to the amount of \$6500.00?

A. I received what you are speaking about when I insured the onions. I received what you are talk-

(Testimony of Silvo Questa.)

ing about. I did not receive the policy, but I received something else.

Q. A cover note?

A. That must have been a cover note.

Q. That was after the fire, wasn't it?

A. Yes.

Q. Don't you recall when this Milwaukee Mechanics' policy on your new dwelling, as you call it, was applied for that it was originally talked about in the amount of \$6500.00 instead of \$7000.00? [19]

A. I don't remember mentioning six thousand dollars on the new dwelling.

Q. \$6500.00, do you remember that?

A. I think it was Mark Yori that——

Mr. Boyle: Are you talking about the barn or the dwelling?

Mr. Levit: I am talking about the new dwelling now.

A. Mr. Yori mentioned \$6500.00.

Q. Don't you recall that you received a cover note for \$6500.00 from Mr. Hassett?

A. I do not.

Q. You do not remember that? And didn't Mr. York tell you that he had a cover note for \$6500.00 on that house?

A. Mr. Yori called up Frank Hassett and mentioned \$6500.00.

Q. Didn't he tell you afterwards that he had that \$6500.00 cover note? A. No.

(Testimony of Silvo Questa.)

Q. Now after that insurance policy was written, Mr. Hassett went out to look at the house, didn't he?
A. Yes.

Q. That was some time around March or April or June, somewhere around there—when was that, do you remember?

A. I don't know. It was in the spring of the year.

Q. You remember when Mr. Hassett came out there?
A. Yes.

Q. And you do not recall on that occasion Mr. Hassett told you that he had issued a binder or cover note in the amount of \$6500.00? [20]

A. Not that I remember.

Q. But you know that it was customary, didn't you, when insurance was bound, before the issuance of a policy, to use a cover note or binder?

A. How was that?

Q. I say you knew when insurance was written and agreed upon that before the policy was issued it was customary to issue a cover note or a binder?

A. No, I do not. When I put in an order for insurance, I think it is insured right then.

Q. You never heard of any cover notes then before this fire at all?
A. No.

Q. When was the first time you ever heard of a cover note?
A. Right now.

Q. You said, I think, when you insured your onions after the fire you received a cover note?

A. I never heard of it before until right now.

(Testimony of Silvo Questa.)

When you mentioned cover note, I didn't even know you call it a cover note.

Q. When you insured your onions, what happened?

A. I received one of those so-called cover notes, if that is what it is.

Q. Later on it was replaced by a policy, wasn't it?

A. No, I don't think he ever sent a policy for the onions.

Q. Was the policy cancelled?

A. No, the onions were sold.

Q. So that there never was any occasion for issuing a policy, is that right? [21]

A. I don't know, but I told him the onions would be in there maybe a month, maybe two months.

Q. You said, I think, that you remember the occasion when Mr. Hassett was out to your ranch with regard to the insurance on the house. Do you remember when that was?

A. That he was out looking at the new house?

Q. Yes.

A. It was in the spring of the year.

Q. Don't you remember at that time Mr. Hassett asking whether you owned the other buildings on the ranch? A. I don't remember that.

Q. Do you remember the conversation that took place at all?

A. He said the house was worth \$7,000.00, that I should carry \$7,000.00 on it.

(Testimony of Silvo Questa.)

Q. Instead of \$6500.00?

A. That is right.

Q. Did you have \$6500.00 on it before that?

A. I thought so. Mark Yori called him up for \$6500.00.

Q. Don't you remember, Mr. Hassett, on that occasion, asking you if you owned the other buildings?

A. No.

Q. Don't remember Mr. Hassett, on that occasion did he said he would like to insure them all?

A. No.

Q. And you told him you were busy but you would talk to him about it some other time? A. No.

Q. You don't recall that? [22] A. No.

Q. Is it your testimony you don't remember whether that occurred or not or that it didn't occur?

A. It didn't occur.

Q. Now you said that this barn was built before 1919. How long before 1919 was it built?

A. I couldn't say, but that is when I went to that ranch, in 1919.

Q. It wasn't a new barn then by any means, was it?

A. It was an old barn, but it was in excellent condition.

Q. I am just speaking now of the age. Isn't it a fact that at the time that the barn burned down it was pretty close to fifty years old?

A. I couldn't say; I don't think that old.

Q. Do you remember when Mr. and Mrs. Yori got married?

(Testimony of Silvo Questa.)

A. That was before my time.

Q. It was about 35 years ago, you don't remember that? A. No.

Q. You wouldn't say that the barn hadn't been standing for some time before that because you don't know? A. I don't know.

Q. When did you paint the barn?

A. I painted the barn one time there was an outfit going through the country with a big spray.

Q. When was that?

A. Quite a few years back.

Q. Well, it was more than ten years before the fire, wasn't it?

A. Well, I couldn't say; I couldn't say; it might have been eight [23] years, might have been ten.

Q. In order to refresh your recollection, do you recall the statement that you gave to me in Mr. Boyle's office on January 26, 1942?

Mr. Boyle: That is the deposition you took, is it not?

Mr. Levit: I wouldn't call it a deposition. He was sworn and examined.

Q. You remember the occasion, don't you, Mr. Questa? A. Yes.

Q. Do you remember on that occasion I asked you to tell me all the work you had done on the barn within the last ten years before the fire, do you remember that? A. Ten years?

Q. Yes.

A. What did I say? I don't know.

(Testimony of Silvo Questa.)

Q. Well, you remember I asked you:

“Q. Did you do any work on the barn?”

A. I would say.

Q. What did you do on it?

A. I put in all cement pillars under it and had it all straightened out.

Q. Did you do the work yourself or have it contracted?

A. I had it contracted.

Q. Who did the work?

A. One of the boys is dead and there is still one alive.

Q. What were their names?

A. Joe Barbagola. [24]

Q. When was that work done?

A. Done in the summer of '38 or '39.

Q. How much did you spend on it at that time?

A. I couldn't remember really.

Q. Well, can you give me an approximation?

A. Around four or five hundred dollars, between four and five hundred.

Q. That is in all, including material?

A. Well, that is the labor and not counting my men's labor. I can remember I paid them so much a day, \$5.00 or \$6.00 a day, yes, \$6.00 a day; they board themselves, and I bought sand and gravel and had my men haul rocks.

(Testimony of Silvo Questa.)

Q. Did this figure of four or five hundred dollars include that?

A. Yes, that will about catch it.

Q. That will about cover the whole thing. Did you put any other work on it?

A. Yes, I fixed some of the lower windows and upper doors, used some shingles and things.

Q. About how much would you say that amounted to?

A. My working men did that. I should judge maybe \$150.00, about \$150.00.

Q. So that in all the repairs that you put on the barn since you took over the property in 1932 would amount to say an approximation of \$750.00?

A. Yes, about that; oh yes.

Q. Do you want to add to that? [25]

A. Yes, I had them take out all the floor.

Q. The floor is not included in this work you have been telling me about?

A. No.

Q. You took out the floor and put down a new floor?

A. I was going to put down a new floor.

Q. You hadn't done that?

A. Before the cement went in in the pillars I had to take all the stalls and floor out.

Q. Well, how much would you say that work amounted to?

(Testimony of Silvo Questa.)

A. Oh it took about a week, four men, oh, a hundred dollars or more."

Now, do you recall so saying?

A. That is right.

Q. Does that refresh your recollection as to whether since 1932 you did any painting on the property?

A. Yes, I forgot to testify about painting.

Q. Then you forgot?

A. You never asked me.

Q. I asked you to tell all the work you did and you did not mention painting.

A. Sure I done painting.

Q. You think the painting was done about eight years before the fire? A. Yes.

Q. You are not sure, it might have been more than ten years?

A. I wouldn't say, I am not sure. [26]

Q. When did you reshingle the roof?

A. The roof was never reshingled.

Q. At the time of the fire there was no floor in the barn? A. No.

Q. And there were no stalls in the barn?

A. No.

Q. What was the condition of the floor in the hay loft? A. Good.

Q. Isn't it a fact there were big holes in it, you could get thru to the ceiling?

A. Why no. We pulled the boards out to get air to the onions.

(Testimony of Silvo Questa.)

Q. Now going back to your first conversation with Mr. Hassett, in regard to this insurance on the barn. You said that it took place in August of 1941, is that correct? A. Yes, along in there.

Q. You think it might have been before that?

A. No, just about August 1st.

Q. Now you recall that you bought a station wagon on July 25th, don't you, of 1941?

A. Yes.

Q. And according to your recollection the first discussion took place a few days after that, is that right? A. Yes.

Q. Did you ever discuss insurance on the barn with Mr. Yori?

A. Well, Mr. Yori recommended——

Mr. Boyle: Answer yes or no. I didn't want to object to the question as being too broad but he asked you a question you can answer yes or no and explain later. [27]

Witness: What is the question please?

(Question read.)

A. Yes.

Q. When was that?

A. Along in the spring, when I was building the new house.

Q. Do you recall ever having that barn insured?

A. Yes.

Q. When did you have it insured?

A. Years back it was insured.

Q. How long back? A. I wouldn't say.

(Testimony of Silvo Questa.)

Q. Well, was it before 1940?

A. Before 1940?

Q. Yes. A. No.

Q. It was after 1940?

A. No. What is the question again?

Q. I don't want to confuse you. You said you couldn't remember how far back and I asked you if it was before 1940.

A. Before 1940—must have been before 1940.

Q. Was it ever insured before that time?

A. I don't remember.

Q. You got the insurance thru Mr. Yori, didn't you?

A. No. We were talking about some insurance but there was no policy issued.

Q. I thought I understood you to say a few minutes ago that you did have the barn insured some years back?

A. Yes, way back before the depression. [28]

Q. How much did you have it insured for?

A. I wouldn't remember.

Q. It wasn't for more than five thousand dollars, was it? A. I couldn't say.

The Court: This is our usual recess time. We will take a short recess for 10 minutes.

(Recess taken at 11:00 o'clock.)

11:10 A.M.

MR. QUESTA

resumed the witness stand on further cross-examination by Mr. Levit.

Q. Mr. Questa, this policy you had on the barn at the time of the depression, or before the depression—I have forgotten what you said—that was cancelled for non-payment of premium, wasn't it?

A. No, there was never a policy issued.

Q. Well, I understood you to say that you did have the barn insured some time before?

A. Yes, before that.

Q. I mean you said around the time of the depression, didn't you?

A. We didn't have any insurance at the time of the depression.

Q. Well, when did you have it insured before the Hassett insurance that we are talking about?

A. How is that?

Q. I say, when did you have it insured before?

A. Insured along in '21, '22 and '23.

Q. Is that the only time you ever had it insured?

A. Yes. [29]

Q. You do not remember what company that was in? A. No.

Q. And I ask you now, is it not a fact that that policy was cancelled for non-payment of premium?

A. No.

Q. You say it is not a fact?

A. No, it is not a fact.

(Testimony of Silvo Questa.)

Q. And you didn't have any insurance then on the barn between 1923 and the time that this suit involves?

A. I don't remember how many years the barn was insured for.

Q. Well, I am just asking for your best recollection. It was uninsured for about, oh, 17 years then, wasn't it?

A. Oh no. Maybe about three or four.

Q. Well, it was just uninsured for three or four years? A. Yes.

Q. Then your testimony now is that you had insurance on it in the year 1938?

A. No, I had no insurance in 1938. I had insurance, I remember, in 1922 and '23 and then years and when the depression hit, I didn't carry no insurance; I couldn't.

Q. So it wasn't insured then between 1924 and 1941?

A. I can't say how many years it was insured.

Q. I mean that is your best recollection?

A. Yes.

Q. Now you are not quite sure about these dates that you have given us, are you, as to when these conversations occurred?

A. What conversations?

Q. With Mr. Hassett? [30]

A. Yes, very sure.

Q. You are very sure that the first conversation occurred around the early part of August in 1941?

(Testimony of Silvo Questa.)

A. Mr. Hassett called me up on the phone on insurance for the station wagon.

Q. You are sure that your first conversation with Mr. Hassett, concerning the insurance on the barn, was after you purchased the station wagon?

A. I had talked to Mr. Hassett before that.

Q. About insurance on the barn?

A. No, not about insurance on the barn.

Q. Then I will repeat my question—are you sure that your first conversation with Mr. Hassett about insurance on the barn took place after you purchased the station wagon?

A. I can't remember.

Q. Do you recall in this examination that we had in Mr. Boyle's office in January of 1942 that you told me your first conversation with Mr. Hassett, with regard to insurance on the barn, was a few days before you purchased the station wagon?

A. I purchased the station wagon on the 25th of July.

Q. Do you recall stating to me in Mr. Boyle's office that you had your first conversation with Mr. Hassett about insurance on the barn before you purchased the station wagon, three or four days before, to be exact?

A. It is so far back it is almost a year; I am not sure about that.

Q. How many conversations in all do you remember having with Mr. Hassett about this insurance on the barn? [31]

(Testimony of Silvo Questa.)

A. Oh, three that I know of.

Q. Now the first one, then the next one you told us about was in the middle of August? A. Yes.

Q. That was where? A. On the street.

Q. And the next one was the last of August at the Riverside bar? A. Yes.

Q. Was any one else present beside you and Mr. Hassett at any of these conversations?

A. At the Riverside bar he was sitting with some people, but I don't know who his friends were.

Q. Did you, at any of these conversations that you had with Mr. Hassett, other than the first conversation, mention anything regarding the amount of insurance that you desired?

A. Will you repeat that again?

(Question read.)

A. I don't understand that.

Mr. Boyle: I might be able to explain. During that discussion——

Mr. Levit: Just a minute. I don't want you to do any explaining. He is doing all right. I will try to get at it another way.

Q. You told us the first conversation you had with Mr. Hassett you told him you wanted \$7500.00 insurance on the barn, you recall that?

A. Yes.

Q. At that conversation did you mention any other figure to [32] Mr. Hassett, that first conversation?

A. I mentioned four thousand dollars for the

(Testimony of Silvo Questa.)

stone house. He was supposed to insure the stone house too.

Q. You mean the old house, as you call it?

A. The stone house. It was just built four years ago.

Q. Then suppose you go back now and tell us this first conversation, just what was said by each of you in detail, because you didn't say anything about the house before.

A. Well, I wanted to insure the barn and the stone house, \$7500.00 on the barn and four thousand dollars on the stone house.

Q. You are quite sure about that, are you?

A. Yes.

Q. Did you say anything to him in that first conversation about the automobile insurance?

A. He called up about the automobile insurance, found out I had bought this station wagon, and he called me up at the ranch and told me the best thing I can do is to tell the Brown Motors to let him have all the insurance on that car.

Q. Was that before or after this first conversation about the barn?

A. That was over the telephone. That was before the conversation about the barn.

Q. That is before you talked to Mr. Hassett about the barn. Now, Mr. Questa, I am going to call your attention to statement that you made to me in Mr. Boyle's office on January 26th of this year, and ask you if recall testifying in this way:

(Testimony of Silvo Questa.)

“Q. Mr. Questa, when did you first discuss insurance on this barn with Mr. Hassett? [33]

A. When I first discussed it, it was along in the latter part of July.

Q. Of 1941? A. About the barn, yes.

Q. And where did that conversation take place?

A. It took place in town here on the street.

Q. You met Mr. Hassett on the street?

A. Yes.

Q. Now your insurance, or some of it had been handled through—— A. Mark Yori.

Q. What is his name? A. Mark Yori.

Q. Had you ever discussed insurance on the barn with Mr. Yori? A. No.

Q. So that the first conversation you had about the insurance on this barn was with Mr. Hassett? A. That is right.

Q. And it was in July of 1941?

A. Yes.

Q. How do you fix that date, Mr. Questa?

A. Well, I fix the date by I had bought a station wagon on the 25th of July.

Q. And was it on the same day that you——

A. No, I had talked to him about the barn and I told him that barn cost \$15,000.00 to build.

Q. Before you get that far, I am just trying to fix [34] the date of this conversation. It was how long after you purchased the automobile on July 25th?

(Testimony of Silvo Questa.)

A. I had talked to him about the barn before that.

Q. Oh, you talked to him before that?

A. Yes.

Q. How long before that?

A. I couldn't be safe on the dates; a little while before.

Q. Would you say it was as much as a month before? A. Oh no.

Q. About a week before?

A. A few days, yes.

Q. A few days before July 25th?

A. That is right."

Now do you recall making that statement to me in Mr. Boyle's office?

A. Well, I guess that is the statement.

Q. It sounds right, doesn't it? A. Yes.

Q. Does that refresh your recollection as to whether or not this conversation, this first conversation, that you had with Mr. Hassett took place in August or in July?

A. In July or the first part of August, as far as I can remember.

Q. But you know, do you not, that you purchased the station wagon on July 25th?

A. That is right.

Q. And you recall that you testified today on direct examination that your first conversation was with Mr. Hassett after you [35] purchased the station wagon? A. That is right.

(Testimony of Silvo Questa.)

Q. And in January you said it was before you purchased the station wagon, is that right?

A. I guess that is right.

Q. What then is your statement now as to your best recollection as to whether this first conversation took place before or after the purchase of the station wagon?

A. It must have been after the station wagon, on the last of July or first of August.

Q. So that your testimony now is that the other statement you gave me in January as to the date of the conversation is incorrect?

A. It must have been.

Q. Now you stated that you talked to Mr. Hassett about the motor car, that is, the insurance on this station wagon, at that same first conversation?

A. Yes.

Q. Now of course you recall, don't you, that when you gave me this statement in January you said nothing about any talk about insurance on the motor car?

A. I didn't. You didn't ask me. Did you ask me?

Q. We will come to that later, but you testified in January that the conversation took place before you purchased the motor car, isn't that correct?

Mr. Boyle: I think he just answered that and told you so.

Q. Therefore, if the conversation took place before the motor [36] car was purchased, you couldn't

(Testimony of Silvo Questa.)

have had any conversation at that time with Mr. Hassett about insurance on the motor car, could you? A. How do you mean?

Q. Well, the conversation about the motor car related to something that took place after you bought it, didn't it? A. Yes.

Q. All right. Now a moment ago you stated that in addition to insurance on the barn in this first conversation, and in addition to insurance on the motor car, you discussed with Mr. Hassett insurance on your house, the stone house, the old house, is that right?

A. Then I spoke about the insurance on the barn.

Q. Yes. We will call it the first conversation, so as to make it perfectly clear what we are talking about. The only time you talked to Mr. Hassett about the barn insurance, you discussed the motor insurance with him, that is your testimony, is it not? A. The car insurance—

Q. The barn insurance.

A. —he called me on the phone.

Q. I understand that, but I am speaking now of the first barn conversation which, according to your present testimony, took place after he called you on the phone and after you had bought the motor car, is that right? A. Yes.

Q. Now I think you said that you mentioned that you wanted four thousand dollars insurance on the house? A. Yes, on the house. [37]

(Testimony of Silvo Questa.)

Q. And \$7500.00 insurance on the barn?

A. Yes.

Q. Now will you repeat, please, as nearly as you can remember it, the words of that conversation? You met Mr. Hassett on the street and who said what?

A. I asked him to insure the barn for \$7500.00.

Q. Just a moment—will you try and state the conversation, to the best of your recollection, in the actual words—I said so and so and he said so and so, as nearly as you can remember.

A. I asked him to insure——

Mr. Boyle: Just give the words. For instance, I said to Mr. Hassett—that is what he wants.

A. I said, “Frank, I want you to insure the barn for \$7500.00 and I want you to insure the stone house for \$4,000.00”, and he said he would insure the barn——

Q. Well, what did he say?

A. He said he would take care of the insurance.

Q. What were his words, as you remember them?

A. He said, “I will take care of it.”

Q. Did he say that as to both the barn and the house? A. Yes.

Q. What else was said at the conversation about this insurance? I am not speaking about the automobile insurance now.

A. And he said he would come down to the ranch to look—“I will come down and look.”

Q. Did you ask him to come down?

A. No, he said he would come down.

(Testimony of Silvo Questa.)

Q. You didn't ask him to? [38]

A. Well, I asked him some time after that to come down, which he wasn't coming.

Q. I am speaking now only of the single conversation, the first conversation. Did you ask him to come down and see the barn?

A. Yes, I asked him to come down and see the barn.

The Court: Let me see if I understand. Do you understand that is the first conversation on the street?

A. That is on the street.

Q. What did you say about coming down to see the barn?

A. Because I believed it should carry full insurance, \$7500.00, because I thought the barn was worth much more than that.

Q. You thought if Mr. Hassett went down there you might agree on some other amount of insurance?

A. Well, I don't know as we would agree on another amount, but he came to the ranch and saw the barn.

Q. Didn't you say just a moment ago the reason you wanted him to come down and see the barn was that you wanted more insurance than that and you thought if he saw it you could get more insurance?

A. Well, as far as I know, they all take a look at buildings before they insure and what I know about insurance is if you don't carry enough, the

(Testimony of Silvo Questa.)

insurance company won't stand for that and if you insure for too much, why is it just too bad.

Q. In other words, you knew that the insurance company would want to see the barn in order to determine how much insurance should be carried on it?

A. Oh I knew that \$7500.00 wasn't over-insured. [39]

Q. That was your knowledge?

A. That was my knowledge.

Q. But I am speaking now of the insurance company's knowledge.

A. I don't know about the insurance company's knowledge.

Q. Now, Mr. Questa, what did you say to Mr. Hassett with regard to his coming to the ranch, giving us your exact words, as nearly as you can?

A. Well, didn't I just answer that question?

Q. I don't think so.

A. I told Frank to insure the barn and insure the house, the stone house, and I asked him to come down to the ranch.

Q. What did you say when you asked him?

A. "Come down to the ranch and see the barn," and he told me he would insure it and take care of it and that he would come down.

Q. You say he told you he would insure it. A moment ago when I asked you for the exact words you replied, "I will take care of it," is that correct?

(Testimony of Silvo Questa.)

A. He said, "I will take care of it," yes.

Q. No more and no less?

A. He said he would come to the ranch.

Q. And he said he would come to the ranch.

Now, Mr. Questa, you remember in January, when I questioned you about this conversation, I asked you to relate the conversation to me, do you remember that?

A. No, I do not remember.

Q. In order to refresh your recollection, I will ask you if you recall testifying as follows, immediately following the part I [40] just read as to when the first conversation took place. We ended up, you remember:

"Q. A few days before July 25th?

A. That is right.

Q. And you met Mr. Hassett on the street?

A. Some place, yes. I know I wasn't down to his office.

Q. At some place in town?

A. That is right.

Q. Was any one else present at that conversation?

A. No.

Q. Now what was your conversation with him at that time?

A. I told him I wanted to insure that barn, knowing he has insurance on the new house, and I told him I wanted to insure that barn and he asked me what I thought of the barn.

(Testimony of Silvo Questa.)

I said, "The barn is a huge thing; it cost \$15,000.00 or more to build it today."

Q. You told him that?

A. That is right. So we figured on \$7500.00.

Q. When you say "we figured," tell me the conversation.

A. We agreed on \$7500.00.

Q. As to the amount of the policy?

A. That is right, and he was going to come down and see.

Q. See the barn?

A. That is right."

Now, Mr. Questa, do you recall so stating? [41]

A. That is right.

Q. You didn't say anything to me in that conversation, as you related it, about any insurance on the house, did you?

A. I guess I didn't.

Q. How do you account for that, Mr. Questa?

A. Well, it was just a lucky thing, I guess, that the house didn't burn down, or I would have the same trouble.

Q. I say how do you account for the fact when you related the conversation to me before in January, you did not state anything about any conversation concerning the house and insurance on the house?

A. No.

Q. Can you account for that?

A. Well, it was taken care of then. He had his

(Testimony of Silvo Questa.)

policies then and the stone house hadn't a policy, so why bring that up?

Q. You didn't get the policy on the house, did you, until after the fire?

A. That is right.

Q. And as a matter of fact, that policy was issued to run from a date after the fire on the barn, was it not?

A. Issued to run after the fire?

Q. Isn't it a fact that that policy on the old house was dated and issued on September 30, 1941, after the fire?

A. Yes, I guess it was, I don't know, but it was supposed to have been issued long before that.

Q. In other words, your testimony is that this testimony was that the policy you were talking to Mr. Hassett about was to cover both the barn and the house, that is correct? [42]

A. Yes.

Q. Now did you ever give Mr. Hassett any more information about what you wanted to cover, in regard to the contents of the house?

A. The furniture, I believe, insure some furniture.

Q. When did you tell him about that?

A. I couldn't—I don't remember the date of that. It must be late in the summer, when we bought the furniture. I don't know what date.

Q. When you bought the furniture, did you say?

A. After we bought the furniture.

(Testimony of Silvo Questa.)

Q. I am speaking of the furniture in the old house, in the stone house.

A. In the stone house? If he insured any furniture in the stone house, he made a mistake, because he was supposed to have insured saddles in the saddle room.

Q. When did you tell him about saddles in the saddle room?

A. After the fire, when I insured the box stall barn and the little saddle room.

Q. And you didn't tell him then anything in connection with furniture in the house?

A. The furniture in the big house has been insured.

Q. For how much?

A. Three thousand dollars.

Q. Will you bring in your policy this afternoon on the old house?

A. Yes.

Q. Now do you remember, Mr. Questa, that you had a talk with [43] Mr. Yori, who is sitting in the courtroom?

A. I talked to Mr. Yori, yes.

Q. After the fire, about this insurance?

A. Yes, I must have.

Q. Mr. Yori has handled your insurance for some time, hasn't he?

A. Yes.

Q. He is related to you, is he not?

A. Yes.

(Testimony of Silvo Questa.)

Q. Now do you remember telling Mr. Yori, after the fire, that you had told Mr. Hassett that you wanted some insurance and that you wanted Mr. Hassett to go down to the ranch and fix the insurance up and you wanted to know about what he could carry? Do you remember making that statement to Mr. Yori?

A. No.

Q. Or any statement similar to that?

A. No.

Q. Do you remember telling Mr. Yori, when he questioned you, or when you told him in regard to the amount of insurance that you hoped to carry on the barn that had burned, do you ever remember mentioning to him that amount of five thousand dollars?

A. No.

Q. Are you quite sure that you never did?

A. Yes, I am very sure.

Q. Do you remember telling him that you and Mr. Hassett could never get together about this insurance on the barn?

A. No.

Q. Without going into the question of the date of the first [44] conversation that you had with Mr. Hassett about the barn insurance, don't you recall that Mr. Hassett specifically asked you at that time if you wanted him to hold the barn covered by insurance before he got out to the ranch and you said no?

A. I don't remember that.

(Testimony of Silvo Questa.)

Q. Did you ever mention any amount of insurance to Mr. Hassett with regard to this barn at any conversation that you had with him about it before the fire, except at the first conversation?

A. The amount of the barn?

Q. The amount of the insurance that you wanted on the barn?

A. The first conversation.

Q. You mentioned it as the first conversation.

A. Yes.

Q. Did you mention it at any of the other conversations?

A. No.

Q. But at each conversation you kept asking Mr. Hassett why he didn't come out there?

A. I asked him to deliver me my policies.

Q. Oh, you asked him to deliver you your policy?

A. Yes.

Q. And you didn't say anything to him then about not coming out to the barn.

A. No, he was to the ranch.

Q. And you were satisfied with that and you didn't expect him to come out again then?

A. No.

Q. Now, as a matter of fact, Mr. Hassett's visit to the ranch took place in your absence and before his bookkeeper came out [45] to collect that check that you put in evidence?

A. Before?

Q. Yes.

A. No, after.

(Testimony of Silvo Questa.)

Q. Mr. Hassett came to the ranch after the book-keeper was out there?

A. That is right.

Q. You are quite sure of that, are you?

A. Yes.

Q. Now I am going to call your attention to the statement that you gave me in January and your answer was—I am just giving the latter part of the answer because the first part relates to another series of questions:

“——so he came down.

Q. Came to your ranch?

A. To the ranch and I had just left for town.

Q. When was that?

A. That was before the 15th of August.”

Do you remember so stating?

A. No, I don't.

Q. You don't remember so stating?

A. It was around, a little after the 15th of August.

Q. Now I am asking you if you remember stating to me in Mr. Boyle's office in January it was a few days before the 15th of August that Mr. Hassett came to the ranch? Do you recall so stating?

A. Well, I don't, but if I stated it, I guess I stated it.

Q. Your testimony now is that it was after the 15th the August, [46] is that right?

A. Yes.

(Testimony of Silvo Questa.)

Q. And then you recall that just after I questioned you about when Mr. Hassett came and you told me it was the 15th of August:

“Q. Now do you remember on August 16th you gave him a check for \$75.00 to apply on your dwelling policy?

A. Yes.

Q. To a young man named Coll?

A. I don't remember the boy's name but he represented himself as bookkeeper for this company.

Q. For Mr. Hassett?

A. That is right.

Q. And he came to the ranch?

A. Yes.

Q. And what conversation did you have with him?

A. I asked him where Frank was. He says he was in town and I says, “He promised to be down here to come and see me but he hasn't come down. Tell him to get down here.” That is all the conversation I had with him.”

Q. Now your testimony is then that that conversation with the bookkeeper took place before and not after Mr. Hassett had visited the ranch?

A. Mr. Hassett, I am sure, visited the ranch after the 15th day of August.

Q. How do you fix that date?

A. How do I fix that date?

(Testimony of Silvo Questa.)

Q. Yes, what makes you sure of it now, that it was after the [47] 15th of August?

A. When I insured the car and I asked him on the street about the car he said he had taken care of it. He had been at the ranch before then when I asked him that, he had already been at the ranch.

Q. And when was that?

A. That was already the middle of August.

Q. Then it may have been before the middle of August that he was there, may it not?

A. No.

Q. What other data can you give us for fixing the date of that visit, other than it was before the time when this automobile insurance was taken care of? I will withdraw the question. As a matter of fact, Mr. Questa, you are not very certain, are you, as to the exact date on which Mr. Hassett came to the ranch?

A. No, I do not know the exact date.

Q. And you are not sure, are you, that it was after instead of before the 15th of August?

A. Well, it was after the 15th of August to my knowledge.

Q. And what makes you think so?

A. I think so.

Q. Now after Mr. Hassett had been to the ranch, you saw him again, didn't you, before the fire?

A. Yes.

Q. And on that occasion did you have any discussions with Mr. Hassett regarding the amount of insurance on this barn?

(Testimony of Silvo Questa.)

A. No, that is when I saw him at the Riverside.

[48]

Q. At the Riverside, but I think you said you saw him about the middle of August, about one P. M., on the street?

A. Yes.

Q. And that was after his visit to the ranch, as you related it this morning, was it not?

A. After his visit to the ranch?

Q. Yes. Well, to refresh your recollection as to what I am driving at—when you told us the story of this matter on direct examination, you spoke of your first conversation with Mr. Hassett. Then you stated he came out to the ranch, then you stated you saw him around the middle of August on the street, and then you stated the last of August you saw him at the Riverside bar, so according to the sequence you gave us this morning, you had two conversations with Mr. Hassett after he had been to the ranch, is that correct?

A. Well, the second conversation I had with Mr. Hassett was on the street and I don't think he had been out to the ranch yet.

Q. Was that conversation before or after you gave that check to Mr. Coll, the bookkeeper, or whatever his name was?

A. That conversation was what?

Q. Was that conversation in the middle of August with Mr. Hassett before or after you gave the check for \$75.00 to Mr. Hassett's bookkeeper?

(Testimony of Silvo Questa.)

A. It must have been right around the next day or so, right in the middle of August, 15th or 16th.

Q. Now you knew, did you not, that Mrs. Questa had no discussion with Mr. Hassett regarding this insurance?

A. No, Mrs. Questa never had any discussion with Mr. Hassett about [49] insurance.

Q. You say she did not?

A. Not that I know of.

Q. She told you, didn't she, that Mr. Hassett had been there?

A. Yes.

Q. And didn't she tell you that he would have to see you, that she didn't know anything about the insurance, didn't she tell you that she had told him that?

A. She told me that he said he would see me in town.

Q. When you saw Mr. Hassett in town before the fire and after he had been to the ranch, did you have any discussion with him as to the amount of the insurance on the barn?

A. I asked Mr. Hassett about delivering my policy about the middle of August and I am quite sure that he had been at the ranch then, in between the 15th, 16th or 17th that I met Mr. Hassett—

The Court: Just a moment—read the question.

(Question read)

Q. I will withdraw the question. You told us this morning that you talked to Mr. Hassett in the

(Testimony of Silvo Questa.)

middle of August and the last of August. Now I asked you which of those conversations took place after he had been at the ranch and you said that only the last one, you only talked to him once after he had been to the ranch, is that right?

A. No, I think I had a conversation on the street with him.

Q. After he had been to the ranch?

A. I don't remember.

Q. Well, at any rate, you do know that conversation at the River- [50] side bar, which was in the latter part of August, took place after he had been at the ranch, you know that, don't you?

A. Yes.

Q. You are quite sure of that?

A. Yes.

Q. Did you have any conversation with him at that time as to the amount of insurance that you were going to take on the barn?

A. At the Riverside bar?

Q. Yes.

A. No.

Q. Well, didn't you say a little while ago, Mr. Questa, that the reason for Mr. Hassett going down to the ranch, and the only reason, was so that he could determine what amount of insurance should be carried? Didn't you tell us that?

A. No.

Q. You didn't? What was the purpose of Mr. Hassett going to the ranch?

A. Well, the purpose was I wanted him to see

(Testimony of Silvo Questa.)

the building and I wanted the barn to carry what it was supposed to carry, \$7500.00.

Q. Didn't you also say you thought perhaps you could get more than that amount of insurance on it and that was why you wanted Mr. Hassett to see it?

A. I didn't say I wanted more.

Q. But you did say that you wanted Mr. Hassett to come down there to determine whether the amount of \$7500.00 was the right amount, in view of the company, isn't that right?

A. Yes.

Q. And yet when you saw Mr. Hassett at the Riverside bar, after [51] he had been there, you had no conversation with him whatever regarding the amount of the policy you were to get?

A. No.

Q. Now isn't it a fact that your conversation at the Riverside bar specifically had to do with Mr. Hassett coming down to the ranch when you were there and seeing you there at the ranch about this insurance?

A. I asked Mr. Hassett about the policy, yes, and he said that he would take care of it and he said that he would come down.

Q. Come down to the ranch, but he had already been there, hadn't he?

A. Yes.

Q. Why would he come?

A. I thought maybe he was going to come down and bring me the policy or visit.

(Testimony of Silvo Questa.)

Q. In other words, his coming down to the ranch did not have anything to do with writing of insurance at all?

A. Not any more, no.

Q. You recall, of course, when you gave the conversation this morning about what took place at the Riverside bar that Mr. Hassett said, "I will take care of it" and "I will come down." Now did you ever mention to Mr. Hassett the reproduction cost of the barn prior to the fire?

A. Before the fire?

Q. Yes.

A. Yes.

Q. When?

A. What was that question? [52]

Q. Before the fire? A. No.

Q. You are quite sure of that, are you?

A. Sure.

Q. Now calling your attention again to the statement that you gave me in Mr. Boyle's office:

"Now what was your conversation with him at that time?"

This refers to the first conversation.

"A. I told him I wanted to insure that barn. You know he has insurance on the new house and I told him I wanted insurance on that barn and he asked me what I thought of the barn. I said, 'Oh, the barn is a huge thing, it cost \$15,000.00 or more to build it today'."

(Testimony of Silvo Questa.)

“Q. You told him that?

A. That is right.”

Do you recall so stating to me?

A. No, I don't.

Mr. Levit: Well, counsel, in order to get the record clear, as long as the witness doesn't remember, I will, if necessary, call Mr. Lozano who transcribed these notes, unless you will stipulate that that was correctly made from the transcript and Mr. Questa did so testify.

Mr. Boyle: I have no doubt that he testified as Mr. Lozano wrote it. I have no doubt it was testified to.

Mr. Levit: Will that be a stipulation?

Mr. Boyle: I will stipulate he so stated, yes.

Mr. Levit: I think that will be all for now. [53]

The Court: We will take our noon recess at this time.

(Recess taken at 12 o'clock.)

Afternoon Session—June 23, 1942

1:50 P. M.

The Court: Court will come to order. We will proceed.

Mr. Questa resumed the witness stand.

Redirect Examination

By Mr. Boyle:

Q. Mr. Questa, you were more or less confused

(Testimony of Silvo Questa.)

on one or two questions there. How many times did Mr. Hassett come to the ranch? A. Once.

Q. Do you remember when he came to the ranch? A. After the 15th of August.

Q. When you say after the 15th of August, how long after would it be?

A. Well, about a week.

Q. Now with relation to any conversation that you had with Mr. Hassett about the cost of reconstructing a barn of that kind in case of a fire, do you remember having such a conversation?

A. I made a mistake on that one. I talked about that with Mr. Hassett somewhere some place but I don't remember where.

Q. You don't know whether it was on the 15th or after then? A. It must have been after.

Q. It must have been after the fire but you don't recollect now that it was before the fire. Now what would be, in your opinion, the value of that barn at the time of the destruction by fire, taking into consideration depreciation, etc.? [54]

A. \$15,000.00.

Mr. Levit: I make the same objection and the same motion as this morning.

Q. How long have you been in the ranching business? A. Practically all my life.

Q. How old are you?

A. Forty-seven years old.

Q. How many ranches have you lived and worked on?

(Testimony of Silvo Questa.)

A. I have owned three ranches in three different places, all in this part.

Q. And you were raised as a boy in this valley?

A. That is right.

Q. Are you more or less familiar with working around barns? A. Yes.

Q. And also structures of all kinds on ranches?

A. Yes.

Q. And during that time you studied ranching, did you know it in all its various kinds?

A. Yes sir.

Q. And you consider that you are a rancher at the present time, knowing all the ramifications thereof? A. Yes sir.

Q. Did you ever study the value of barns?

A. Yes, I have had buildings built and know what they cost; buying pieces of timber that run into money right now.

Q. With a barn on a ranch does it or not depreciate with age?

A. Well, if it is kept up the depreciation on it doesn't bother so much. [55]

Q. This barn had more or less been repaired fundamentally a short time before, had it not?

A. Yes.

Q. With all those things in view, what would be your estimation of the value of that property as a barn at the time it was burned?

A. You mean the value?

Q. Well, what would you say was the value, yes?

A. The value on it would be \$8,000.00.

(Testimony of Silvo Questa.)

Q. Now with relation to the ranch on which you live at the present time and all the property thereon, including the barn, who owned that property before you owned it? A. The Yori estate.

Q. Who owned it before that?

A. Derby, I believe.

Q. When you say the Yori estate, where does your wife's mother come in, if she does, in that particular matter?

A. My wife is a daughter.

Q. But what particular interest did your wife's mother have in that property before you people went on it? A. She owned it.

Q. Now in relation to insurance, if any were carried on that ranch or the property, the buildings, by whom was it carried, if you know and through whom, if you know? A. Mrs. Yori.

Q. Up to what time was it carried by Mrs. Yori, to your knowledge?

A. I think I took it over in 1932 and there was a policy on there yet for three years.

Q. In other words, that would run to 1935, is that it? [56] A. Yes.

Q. By whom was that policy or insurance paid, if you know? A. I don't know.

Q. Was any of the business ever handled through the banks here?

A. Yes, First National.

Q. Was that because of a loan that was on the ranch? A. I believe so.

(Testimony of Silvo Questa.)

Q. Do you know who had the loan?

A. On the ranch?

Q. Yes, did you have it or did somebody else have it? A. I don't understand.

Q. I am trying to get at the idea of paying insurance, if any were paid. You were not very clear on the payment of insurance. If you didn't pay it, did somebody else pay it?

A. Mrs. Yori paid it.

Q. Do you know what company she paid it in?

A. No, I do not.

Q. You know as a matter of fact it was paid, however? A. Yes.

Q. Do you know whether she paid it or whether the bank paid it? A. I don't know.

Q. Do you know when the last insurance expired on the ranch property, do you remember?

A. I think it was around 1935.

Q. And was it insured after '35 by you?

A. No.

Q. And do you know the reason why?

A. Yes. [57]

Mr. Levit: Just a minute—I withdraw the objection.

Q. Do you know the reason why?

A. Yes.

Q. What was the reason?

A. The depression.

Q. In other words, you did not have the money to pay for it? A. That is right.

(Testimony of Silvo Questa.)

Q. Now with relation to the contents of the barn, was there anything in that barn at the time the barn burned down that was insured? A. Yes.

Q. By whom?

A. There was some hay in the barn.

Q. How much?

A. I had over 900 bales in one corner that was supposed to have been sold and wasn't paid for, didn't take it.

Q. Who was the party?

A. Monaei Lindley Cupit.

Q. That was the former wife of Gordon Rice?

A. That is right.

Q. Was she Mrs. Rice at the time?

A. No, Cupit. She had 12 tons left out of 70 some tons in the barn.

Q. Do you know whether or not and with whom it was insured?

A. Parish. Howard Parish was there with some other fellow insuring the hay.

Q. It was not in this same company then was it, or was it? Do you know? [58]

A. This company?

Q. Yes, do you know whether it was or not?

A. No, it must have been Parish.

Q. Some other company? A. Yes.

Q. Now with reference to a matter that is not very clear. On redirect I desire to ask you when was the first time that you spoke to Mr. Hassett, the insurance agent, about the insurance on the barn?

(Testimony of Silvo Questa.)

Mr. Levit: That has been asked and answered several times.

Mr. Boyle: If it is understood, it is all right.

The Court: It has been asked and answered a number of times, but I will permit it.

A. August 1st.

Q. Do you remember where?

A. On Virginia Street.

Q. Reno? A. Reno, yes.

Q. Did you speak to him about it thereafter?

A. In his office.

Q. And then you testified he came down to the ranch? A. Yes.

Q. Did he speak to any one on the ranch?

A. My wife.

Mr. Boyle: You may cross-examine.

Recross Examination

By Mr. Levit:

Q. How much was the barn insured for under this other policy [59] that you spoke about?

A. I don't know what insurance they were carrying. Mrs. Yori was carrying the insurance on that.

Q. You said it was in force for three years after you took the property over. Didn't you know how much insurance you had?

A. I never had the policy, never seen the policy.

Q. Didn't you ever inquire? A. No.

Q. You don't recall, then, with reference to this other insurance that Mr. Yori told you that he had

(Testimony of Silvo Questa.)

been taking care of the premium on it for some time but that he couldn't continue to carry it indefinitely and asked you to pay it? You don't recall that? A. No.

Q. You don't recall if he said if you couldn't carry it you had better cancel it? A. No.

Mr. Boyle: If this is cross-examination, I think it is entirely improper, your Honor, because I do not remember any testimony of that kind, but if it is for impeachment, I will withdraw my objection.

Mr. Levit: I am merely questioning about the transaction he brought out on direct.

The Court: I wasn't impressed that the question was not reasonably proper. I will permit it.

Q. Now, Mr. Questa, how much do you think, in your opinion, a barn of the type of this barn depreciates per year?

A. Well, I haven't any idea, I couldn't say. [60]

Q. Well, your figure of \$8,000.00, did you take depreciation into consideration in fixing that figure?

A. I believe it should have been insured for 50 per cent.

Q. Fifty per cent of what?

A. Fifteen thousand.

Q. That was your testimony as to what the replacement cost was, is that right? A. Yes.

Q. In other words, you figured there was a depreciation of 50 per cent?

A. No, I didn't mean it that way.

Q. Will you explain what you did mean then in fixing that \$8,000.00 premium?

(Testimony of Silvo Questa.)

A. Well, I figured \$8,000.00 would have been the right amount of insurance, \$7500.00 to \$8,000.00, for the barn.

Q. Well now what did you consider the value of the barn to be at the time of the fire?

A. Fifteen thousand dollars.

Q. In other words, the figure of \$8,000.00 that you gave was merely the amount of insurance that you think it would have been proper to carry?

A. Yes, \$7500.00 to \$8,000.00.

Q. But your testimony as to the value of the barn at the time of the fire was \$15,000.00?

A. I must have misunderstood the question.

Q. Well, how is it now?

A. Well, the barn was valued at \$15,000.00.

Q. By you, is that right? [61]

A. Yes.

Q. That was your idea of its value as it stood on the day of the fire? A. That is right.

Q. And what was the figure of \$8,000.00 that you mentioned?

A. For insurance, \$7500.00 to \$8,000.00.

Q. In other words, that was all the insurance on it that you wanted to carry?

A. That is right.

Q. In other words, you were figuring on insuring it for about 50 per cent of what you considered its value to be? A. That is right.

Mr. Levit: I think that is all, your Honor, except I would like to renew my motion in regard to the testimony.

The Court: We will take those motions up at the time of argument. I suggest that you bring out something concerning the size of the barn.

Mr. Boyle: I was going to bring that out, your Honor, I have a witness purposely for that.

The Court: All right.

MRS. QUESTA,

being first duly sworn, testified as follows:

Direct Examination

By Mr. Boyle:

Q. What is your name please?

A. Jennie Questa.

Q. Where do you reside?

A. R. F. D. No. 2, Box 102, Reno, Nevada.

Q. Are you a citizen of Nevada? [62]

A. Yes.

Q. You have lived here all your life, have you not? A. Yes.

Q. You have reared your family here?

A. Yes.

Q. Mrs. Qesta, how long have you known Mr. Hassett?

A. I have known him about three or four years.

Q. When did you first meet him?

A. I have met him up town and then met him when he came down to the ranch.

Q. Did or did not a fire occur on the ranch?

A. Yes.

(Testimony of Mrs. Jennie Questa.)

Q. What did that fire do, if you recollect?

A. Destroyed a barn.

Q. How long before that occasion did you see Mr. Hassett, before it burned down?

A. Well, he came down, I imagine it was about, it was around August some time, the latter part of August.

Q. That would be 1941? A. Yes.

Q. Do you know at that time what his mission was, if you know? A. Yes.

Q. What was it? A. The insurance.

Q. Did you see him at that time?

A. Yes.

Q. You saw him, did you not?

A. Yes, I did. [63]

Q. Did you speak with him at that time?

A. Yes.

Q. Do you know, of your own knowledge, what he did? A. Yes.

Q. What did he do?

A. He drove in and came into the house and then he went out and stood in front of his car and looked all over the buildings, facing the barn, he was standing right in front of it.

Q. Kindly tell the court how far approximately, in feet? A. I don't know as I could.

Q. Well, we will say approximate it with the building across the street, was it that far?

A. Oh, further than that. About 90 yards, something like that. I don't know if it is that far.

(Testimony of Mrs. Jennie Questa.)

Q. Did you see him walk around the buildings?

A. Well, he stood out in front of the car and just looked around.

Q. Did he go into the house at any time?

A. After he stood outside for a while then I asked him in the house and he went all thru the house, looked at every room in the house and everything in the house.

Mr. Levit: Which house was that?

A. That was the new house. And then he went out and stood in front of his car and I stood out with him and he was still looking around and I said, "Anything I can do for you? Mr. Questa isn't here." He said, "No, I will see him up town."

Q. Now do you know whether or not he went into the barn and through the barn?

A. No, he didn't go in the barn. [64]

Q. Did he go any other place?

A. No, just outside there.

Q. Did he go in a place called the stone house?

A. No, he didn't go there.

Q. Do you know whether or not he insured the stone house?

A. Well, I thought it was insured.

Q. Well, did he go into the stone house?

A. He walked around from here to the building.

Q. But you didn't see him go into it?

A. And he drove around there with the car when he left.

Q. What did he drive around?

(Testimony of Mrs. Jennie Questa.)

A. He had a car.

Q. Did he drive around the barn?

A. Up past the barn.

Q. Then how far would he be from the barn.

A. Very close, about from here to the building.

Q. And in going out he had to pass that close to it?

A. Well, I didn't see him go out.

The Court: When you say "This building over there", you mean the State Building?

A. Well, it wasn't that far.

Q. Then in approximate feet?

A. Not that far.

Q. Well, would it be half the distance?

A. Yes, about half the distance.

Q. That would be only about 75 feet then.

A. Yes, about that.

Q. Now with regard to a certain check that was offered in evi- [65] dence today, I would like to ask you if you have seen that before and if that is your signature?

A. That is my signature.

Q. And do you know whom you gave that to?

A. I do not know his name. He said he was from the Milwaukee Insurance Company.

Q. Do you know whether or not he was representing Mr. Hassett?

A. Yes, he said Mr. Hassett sent him down.

Q. Did you give him that check?

A. I said, "How much do you want? Do you want it all?" He said, "No, give what you want." I said, "How much do you want?" He said make it \$75.00. You can pay the rest after."

(Testimony of Mrs. Jennie Questa.)

Q. How long was it between the time the home was insured and the time you gave him the check?

A. The insurance policy was brought there in August.

Q. When was it insured, if you recollect?

A. Well, I can't think when it was insured.

Q. This bears the date—it is in evidence—of March 25, 1941.

A. Well, this policy wasn't delivered to me until August.

Q. That would be March, April, May, June, July, August, five months?

A. Five months.

Q. Now do you know why that wasn't delivered to you for five months? A. No, I do not.

Q. You didn't make any objections to it?

A. No, I thought, you know—well, I tell you what happened. Young Junior Yori came down. He said, "I've been carrying this around in my pocket" and a few days after his bookkeeper came [66] down to collect.

Q. Do you know how long Yori had it in his pocket? A. No.

Q. Did you give young Yori instructions to get it? A. No.

Q. It wasn't made out to him, was it?

A. No.

Q. When you paid the check of \$75.00 five months after, was that in complete payment for it?

A. No, it wasn't complete. There was a balance.

(Testimony of Mrs. Jennie Questa.)

Q. Do you know how much the balance was?

A. I can't say exactly. It might show from the policy, but I can't say exactly. It was a hundred something.

Q. And then did you pay that later?

A. Yes.

Q. And do you remember when that was paid?

A. No, I don't. Mr. Questa paid that.

Q. You wouldn't know whether it was a month or how long after? A. No, I don't.

Q. And the barn, the size of the barn, are you familiar with the size of the barn?

A. Oh yes, I have been in it nearly every day.

Q. What would you say the dimensions of the barn were?

A. I don't know. It was a huge barn really, a large barn.

Q. Was it not known as the largest barn in the Meadows?

Mr. Levit: Objected to.

The Court: I will permit it, subject to the objection.

Q. Now with reference to the property itself, the ranch, etc., by [67] whom was it owned before you owned it? A. Mrs. Maria Yori.

Q. Was that your mother? A. Yes.

Q. And then you came in after Mrs. Yori died, was that it? A. Yes.

Q. How long after your mother died did you go there? A. I have been there all the time.

(Testimony of Mrs. Jennie Questa.)

Q. Even before your mother died?

A. Yes.

Q. Were you raised there?

A. Well, almost.

Q. How many years have you lived there since Mrs. Yori died?

A. Well, I have been there almost all my lifetime.

Q. I mean since? A. All the time.

Q. Let us get the time that your mother died, about what year? A. 1933, I think.

Q. Prior to 1933, to your own knowledge, was the barn insured?

A. Yes, my mother carried an insurance.

Q. Do you know with whom?

A. I knew it was thru the bank.

Q. When you say thru the bank, you mean the First National Bank?

A. First National Bank.

Q. That followed the Reno National Bank?

A. Yes.

Q. And the First National Bank, do you know why they carried it, do you know of your own knowledge? Was it because of mortgage or [68] something?

A. There was no mortgage.

Q. Then they were the insurance agents, was that the idea?

A. I really couldn't say. I don't know who was insurance agent for the bank. Mother took care

(Testimony of Mrs. Jennie Questa.)

of that and I didn't pay any attention. I know it was insured.

Q. And your husband testified to the effect it was insured up to 1935?

A. Yes, because I knew after he took over the ranch it was still insured.

Q. Do you remember when the insurance lapsed at that time?

A. No, I don't know exactly when, but I know it did.

Q. Do you know the reason?

A. Well, on account we didn't have the money.

Mr. Boyle: You may cross-examine.

Cross-Examination

By Mr. Levit:

Q. When do you first remember this ranch, Mrs. Questa? A. First remember this ranch?

Q. Yes, how far back does your memory go?

A. Well, I can say about forty years.

Q. Were you living on it at that time?

A. Yes.

Q. Your mother owned it then since about 1902?

A. Well, no, my father was still living then.

Q. Do you know when your mother or father acquired the property?

A. I can't remember the date.

Q. But you think about forty years ago?

A. Just about. [69]

(Testimony of Mrs. Jennie Questa.)

Q. And the barn was there at that time, wasn't it?
A. Yes.

Q. You don't know how long it had been there at that time?

A. It was almost a brand new barn when we moved there.

Q. Do you recall when it was built?

A. No, I do not.

Q. How old are you, Mrs. Questa?

A. Forty-five.

Q. Then you think your recollection is good to go back to when you were five years old and you can remember the barn was new at that time?

A. Well, you can always remember something from a child.

Q. Your impression is it was new?

A. It was a good barn, yes.

Q. I am merely speaking of the age of it.

A. Yes.

Q. Who owned the property before your father had it?
A. Derby.

Q. Do you know if Mr. Derby built the barn?

A. I couldn't say.

Q. Mrs. Yori is your sister then?
A. No.

Q. What is the relationship there?

A. Just Mrs. Yori.

Q. Are you related to Mr. Yori?

A. Mark Yori?

Q. Yes.
A. He is a brother of mine. [70]

Q. At the time Mr. Hassett was out there you

(Testimony of Mrs. Jennie Questa.)

fix it the latter part of August, how do you fix that date, Mrs. Questa?

A. Because he came down there after I had taken the check to the company, then Mr. Hassett drove down there.

Q. You are quite sure it wasn't before?

A. No, it wasn't, it was after the 15th. It was about a week after.

Q. You recall, don't you, that you were present during the time that your husband was examined in Mr. Boyle's office in January?

A. Yes, I was there.

Q. You know you gave some testimony at that time too? A. Yes.

Q. And you remember your husband saying at that time that the time that Mr. Hassett had come to the ranch was before August 15th?

A. I don't remember his saying that.

Q. You had no conversation at all with Mr. Hassett regarding insurance, did you, when he was out there?

A. Not when he was out there.

Q. Did you talk to him about insurance?

A. No, I wanted to know what I could do. Mr. Questa wasn't there. I asked him if there was something I could do. He said no, he would see Mr. Questa in town.

Q. So you did have no conversation about insurance?

A. No, but I know what he was there for.

(Testimony of Mrs. Jennie Questa.)

Q. But I want to make it perfectly clear that so far as conversation between you, the word insurance wasn't mentioned?

A. I didn't mention insurance. [71]

Q. And the barn wasn't mentioned?

A. No. We probably mentioned the barn.

Q. And he didn't mention anything about the barn or insurance then?

A. No, but I knew what he was coming down for.

Q. Well, you assumed that?

A. Yes, I knew. Mr. Questa told me he was coming.

Mr. Levit: That is all.

Mr. Boyle: That is all.

MR. S. L. WILLIAMS,

a witness on behalf of plaintiffs, being first duly sworn, testified as follows:

Direct Examination

By Mr. Boyle:

Q. What is your name please?

A. S. L. Williams.

Q. Where do you reside? A. Sparks.

Q. Nevada? A. Yes.

Q. How long have you lived in Nevada?

A. About 39 years.

Q. What is your business or occupation?

(Testimony of S. L. Williams.)

A. Building contractor.

Q. How long have you been a building contractor? A. About 32 years.

Q. While you were a building contractor in Nevada, what buildings, if any, did you build and how many, if you know?

A. Oh, I couldn't tell you how many exactly. Built an awful lot; average about 27 to 28 houses a year in Sparks for 10 or 12 years [72] at one stretch.

Q. Have you built any large buildings?

A. Oh, not really large buildings. I built the Catholic Church in Sparks, built the Reno Furniture Store in Reno, built the Davis Hotel in Sparks.

Q. You built the Baptist Church?

A. Rebuilt the Baptist Church, built the First Christian Church and built the new Telephone building in Sparks.

Q. Then you have had more than the average experience as a builder in all classes of building construction, have you not? A. I think so.

Q. And you know the values of building construction? A. I feel so.

Q. And you also know whether work is good, faulty, or otherwise? A. Yes.

Q. You also know whether extraordinary timbers are placed in the building or ordinary?

A. Yes sir.

Q. Did you or did you not ever see a building

(Testimony of S. L. Williams.)

known as the barn on the Glendale Ranch of the Questas?

A. Yes, I rebuilt a stone house that is there. There had been a fire at some time and I put a new roof on it and new floor and windows and doors and built a porch on it; quite a lot of work. I don't remember exactly—it was about five years ago—and it wasn't far from the barn.

Q. How far was it?

A. I should say somewhere around 100 yards, 300 feet.

Q. Did you ever go into the barn and inspect it and look around it? [73]

A. Well, I didn't go thru it and inspect it, but I was in there. I went down once or twice to get something and couldn't help but notice the construction because it was out of the ordinary.

Q. When you say "out of the ordinary", kindly explain to the court how much out of the ordinary.

A. Most barns built nowadays are what you call balloon, light timber; these were heavy.

Q. When you say heavy timbers as compared with ordinary timbers, what were the size of the timbers in this barn, as compared with ones of balloon construction today?

A. Well, most of them the biggest are 4 x 6 posts and 6 x 6 outside and these posts were about 10 x 10.

Q. And when you say 10 x 10, would that increase the durability of the barn, as to age?

(Testimony of S. L. Williams.)

A. Oh, I think it would.

Q. Then if a barn were built of 10 x 10 construction, how long would it last as compared to one built of four by six, or six by six?

A. I wouldn't know how to estimate that. Make it a lot stronger in case of wind, snow, or anything like that.

Q. Then if a building of that kind were recently reconstructed, or if a building of that kind with the timbers you have mentioned, with new piers put under them, these piers being about one and a half feet thick or one foot thick and five feet square, what effect would that have upon the structure of the barn as to the durability?

A. It would make it last a lot longer.

Q. It would restore it almost as good as any modern barn, would [74] it not?

A. I think so.

Q. I show you some drawings and ask you if you have ever seen them before?

A. Yes, I did them.

Q. When you saw the barn at that time you were working down there, what was the condition of the outer structure, the columns, the elevation?

A. You mean the condition of it?

Q. Yes.

A. Well, it all looked good to me, except the roof shingles looked a little old.

Q. Do you know whether or not it was leaking?

A. No, I do not.

(Testimony of S. L. Williams.)

Q. What would be your estimate of the cost to reshingle that roof with new shingles of a goodly type?

A. I think I figured about 83,000 shingles.

Q. And what would the cost be to put the whole thing on, labor and all material?

A. Shingles are selling at \$8.00 a thousand and it would cost about \$3.50 a thousand labor putting them on and about 15 cents a thousand for nails.

Q. It would be a thousand dollars approximately?

A. I could figure it up in a minute.

Q. I will figure it up. What is that amount?

A. Eight dollars a thousand for the shingles.

Q. How many thousand?

A. Eighty-three thousand. [75]

Q. That is \$664.00. Now the labor per thousand?

A. It has been running a little over \$3.00 a thousand.

Q. Make it \$4.00.

A. Well, \$3.25.

Q. That would be \$270.00, and that would include nails?

A. No, the nails would be about two pounds to the thousand, about 160 pounds at seven cents a pound.

Q. That would be \$11.62. The total according to that—

A. Wait, and something has to be added for unemployment tax and industrial insurance.

Q. Well make it \$100.00.

(Testimony of S. L. Williams.)

A. And the contractor has to have a profit, something for his work, about 10 per cent.

Q. That would be another \$100. That would be \$1195. That is your estimate of what it would cost?

A. About what it would cost.

Q. When you were in the building do you recollect whether or not there was anything, such as extraordinary irons or braces or angles or lag screws that might have been put in the building?

A. Well, I didn't pay so much attention to that but before I drew this plan I went down there and hunted up the old braces that go over the hay loft and they were under the rods and of course there were angle washers under part of the rods, ordinary washers under straight rods and on top. I went down on the river bank and found a part of the old braces, so as to find out because I didn't know exactly what they were.

Q. Would you or not say they were of extraordinary strength?

A. Well, that is about the average. I have built a lot of [76] buildings and worked a lot of braces and that is about average of that kind of brace. If anything, it is a little heavier than the ordinary.

Q. Would you or not say a building of that construction, using the fabric you have mentioned, extraordinary size timbers, with irons and rods, would it or not stand the elements very easily in the State of Nevada?

A. Oh yes.

(Testimony of S. L. Williams.)

Q. Could you not say if it really became necessary to put an outside to the building, if the outside had really worn out, by putting on the outside and new roof it would be as good as new?

Mr. Levit: Objected to as calling for conclusion.

The Court: I will permit the question.

A. What was that question again?

(Question read.)

A. Well, I don't think it would be as good as new, because pine lumber, even in the dry, after years is not as strong as when new.

Q. Considering the extraordinary size of the timbers, would it not be as good as a new building of today?

Mr. Levit: Objected to as leading and calls for conclusion.

Mr. Boyle: He is testifying as an expert.

The Court: On that theory, I will permit the question.

(Question read.)

A. It would be as good as a new building of lighter construction.

Q. Now, Mr. Williams, will you kindly tell the court the size of that building, as to dimensions, height, etc., by looking at [77] your drawing.

A. One hundred twelve feet six inches long and 47 feet wide. Now when I drew this I went down there and took the measurements with a steel tape-line and I don't think it would vary more than a

(Testimony of S. L. Williams.)

few inches. But now the height of the building, I have to kind of go from memory and I asked Mr. Questa how high it was. I have the height up to the base 28 feet from the top of the concrete piers and the peak of the roof is 24 feet above that. That makes the peak of the roof about 53 feet.

Q. To replace that particular building, did you ever give that any consideration?

A. Well, that is why I figured it. I figured the lumber as near as I could all the way through, nails, hardware, estimated the labor.

Q. Did you figure out the entire amount of lumber that you believe it would take to reconstruct that? A. Yes.

Q. I show you a certain paper and ask if you have ever seen that before? A. Yes.

Q. And did you make notes at the time you checked up as to the quantities it would require for reconstruction of that barn, and also the labor it would take and other costs to put it back in the condition it was prior to the time of the fire?

A. Yes, I figured it all out.

Q. Will you kindly tell the court what you believe would be the amount of lumber it would take and also as to the value. If the court desires just the value, if you will stipulate we would like—[78]

Mr. Levit: We have no objection to your offering it in evidence as an exhibit.

Q. What is the total amount there?

(Testimony of S. L. Williams.)

A. \$14,235.30.

Q. This would be your estimate of the amount?

A. Yes.

Q. And all timbers, etc. We offer this in evidence as Plaintiffs' Exhibit "E".

The Court: It may be admitted.

Mr. Levit: By stipulating it doesn't mean that we agree; it means we have no objection.

Mr. Boyle: This is his estimate as to what he believes it would cost to replace it.

Mr. Levit: That is right.

Mr. Boyle: We offer these drawings; first sectional elevation and front elevation.

A. This is the front elevation and this is cross-section.

Q. The other would be the side elevation, is that so? A. West side.

Q. And the other would be the foundation plan?

A. Foundation.

Q. And the other would be the braces?

A. Well, that I intended for the hay loft. These braces are over the hay loft.

Mr. Boyle: Your Honor, we would like to offer this in evidence.

The Court: It may be admitted.

Clerk: Plaintiffs' E. [79]

EXHIBIT E

S. L. Williams, Contractor
233 Thirteenth St.
Sparks, Nevada
Phone 602.

SPECIFICATION FOR BARN FOR
SILVO QUESTA—GLENDALE ROAD

All material used in the construction of barn shall be # pine such as sills posts, beams, braces, studding, cords, joists, plates, rafters, boxing and battens.

All roof sheathing to be # 3 & 4 sheathing spaced.

All shingles shall be # 1 5/2 cedar, laid with 4" exposure.

Material to be used as follows:

Sills 10 x 12, posts 10 x 10, plates 10 x 10, rafters and collar beams 2 x 6 angle braces 6 x 8 and 6 x 6, nail girts 4 x 6.

T&G plank floor to be laid on first floor and hay loft floor.

Girders 10 x 10, 3 x 8 first floor joists set 16" on centers, hay loft floor joists to be 2 x 12 set 16" on centers.

Box stalls to be built as follows: 6 x 6 posts boxed with 2" plank.

Exterior boxing to be 1 x 12 and 1 x 4 battens, sheathing on roof shall be 1 x 6 or 1 x 8 spaced not over 2 1/2" apart.

There shall be eight trusses over hay loft, as shown on plan, as follows:

10 x 12 lower cord, 10 x 12 end braces, 10 x 10

(Testimony of S. L. Williams.)

top cord and all other braces shall be 8 x 8, all framed as shown on drawings.

All rods used in trusses shall be 1 inch rods with iron plates at top and bottom.

All doors and windows to be as shown on plan.

I figure the cost as followa:

35 cu. yds. concrete in place.....	\$ 350.00
130000 boaed feet lumber and timbers.....	5,850.00
Doors and windows	250.00
83000 cedar shingles	664.00
Truss rods and bolts.....	350.00
Nails, hinges, locks &c.....	150.00
Carpenter labor, including shingling.....	4843.00
S.S. and unemployment tax and industrial insurance	484.30
Contractors labor and profit.....	1294.00

I will provide all material and to complete the barn for the sum of.....\$ 14235.30

S. L. WILLIAMS,

Contractor.

[Endorsed]: Filed June 23, 1942.

Q. Mr. Williams, you note on the piers that form the foundation for the uprights the 10 x 10, as you have written here, would that mean they are ten inches square? A. Yes.

Q. Was each column 10 inches square?

A. Ten inches square post.

(Testimony of S. L. Williams.)

Q. And you have testified that the ordinary barn of today is built of 6 x 6?

A. Well, not many of them over 6 x 6.

Q. In noting the piers, did you dig down and check up beneath?

A. No, I measured the floor and figured it should be at least three feet thick.

Q. And then the piers on top would be 2 x 9?

A. Two by 9; some a little over and some less.

Q. Then if you were to build, you would build on top of those piers, is that the idea?

A. Well, I figured on the piers and all all new.

Q. Then when you figured the reconstruction of the barn in that particular matter that you gave to the court, then you figured that being all torn out and new and that would be part of the cost?

A. Yes.

Q. I see. Then there was no salvage. You may cross-examine.

Cross-Examination

By Mr. Levit:

Q. These concrete piers were still there, were they not? A. Yes.

Q. Weren't they perfectly usable in the reconstruction of the buildings? [80]

A. Well, in rebuilding the building, I don't think I would want to use them.

Q. Why not?

A. Well the piers—say that is the pier and post stood here. They went down into the piers like

(Testimony of S. L. Williams.)

that. I would rather put the piers in and the posts on top.

Q. Did the fire damage the piers?

A. Oh, I don't know as it damaged it any.

Q. In other words, you just thought you could build the building a little better than it was built before the fire?

A. Well, I like to have the foundation strong, solid.

Q. How much concrete would it take for these various piers that you were talking about?

A. I think I figured them 40 piers, 35 a yard, as near as I remember. I have it on that list there.

Q. Thirty-five cubic yards of concrete?

A. Yes.

Q. That is just for the piers? A. Yes.

Q. Three hundred fifty yards. What would have been the advantage of constructing the piers the way your estimate calls for over the way they were constructed?

A. Well, it is always better, I think, where a wood post sets on concrete to have it on top and some sort of water proofing to keep moisture from following up the piers, that was my idea.

Q. Then so far as concrete piers are concerned, your estimate calls for what would be, in your opinion, a better building than the barn that burned, is that right? [81]

A. Well, that part of it might be.

Q. Where did you get your information con-

(Testimony of S. L. Williams.)

cerning details of construction in this building? Did you take that from your visit five years before, or did you get the details from Mr. Questa?

A. Well, as I said, I looked in there and saw the construction. It was so much out of the ordinary I remembered how it was, but before I drew the plan I went down there and measured up everything and went down along the river bank and saw the braces and all together figured out what part of the building they were and so far as uprights, there were part of them sticking in the concrete yet, that is, places you could see a hole in the concrete where they had been setting.

Q. Did you get any information from Mr. Questa concerning details of the interior construction?

A. No, not more than the height. I wasn't sure about the height and we talked about that. I went down there and measured everything up before he got there.

Q. How much of the cost that you have estimated here is attributable to the stalls?

A. Well, I couldn't tell you off hand.

Q. Well, I don't want you to tell me off hand, but can you tell me? A. No.

Q. Didn't you make any figures on it?

A. Sure I figured it and then lumped it all together. I don't remember how many feet were in the stalls.

Q. Where did you get your information from

(Testimony of S. L. Williams.)

to determine how much lumber you would need to build the stalls? [82]

A. Well, I figured out as near as I could remember how they were built.

Q. Five years before? A. Yes.

Q. Well, how many feet would you say were there?

A. Well, I can't tell you now, wouldn't attempt to.

Q. Have you any figures on it?

A. Well, I can measure it up.

Q. How about the floor of the barn?

A. As I understood—that is one thing I wasn't sure about, but it looked to me like two inch floor, what they call decking.

Q. You mean that you would remember from five years before how it had looked and had a two-inch floor? A. Yes.

Q. What other items do you change in making your construction estimate besides the concrete piers?

A. Oh, I don't know as I made any other change.

Q. Well, can't you give us any breakdown on the approximate percentage of your figures that would have gone into say the stalls and the floor of the barn?

A. No, I couldn't without looking it up.

Q. Was it ten per cent of the total cost?

A. Well, I wouldn't say.

Q. You can't give us any idea at all?

(Testimony of S. L. Williams.)

A. Because I don't remember and I won't guess it.

Q. So if it developed in the evidence that this barn, at the time of the fire, had no stalls and had no floor, you wouldn't know how to adjust those figures in order to arrive at— [83]

A. So far as the floor, it would be easy, but the stalls are different.

Q. Well, how about the floor?

A. Well, the floor would be the square surface multiplied by two, two-inch stuff.

Q. In other words, you take that from your board feet, is that the idea? A. Yes.

Q. So the total area of that barn was approximately 5200 or 5300 feet, something like that?

A. Forty-seven by 112-6.

Q. Would be about 5,264 feet, wouldn't it? Do you want to check that?

The Court: Well, that can be checked. That is a matter of multiplication.

Q. 5,264 feet?

A. Well, it would be some place around there.

Q. Multiply that then by two and that would give you 10,500 feet roughly?

A. Then you have to add a fifth for matching. You have about 5½ inches for 6-inch board.

Q. So would you add that fifth before you doubled it or after you doubled it?

A. Well, I think after you doubled it.

Q. So that would be 10,500 plus another 2,100, is that right? A. Roughly speaking, yes.

(Testimony of S. L. Williams.)

Q. That would be 12,600 feet?

A. Yes. [84]

Q. And then if you took the percentage of that number of feet to the total number of board feet and then took that same percentage of your total cost, that would be approximately the difference, wouldn't it?

A. Well, it would be hardly a clear break because the higher up you put up a building—I mean, a second floor will cost more for labor than the first floor, nearly 50 per cent more.

Q. I am only trying to get you to tell us; I don't want to confuse you.

A. I understand, but work on the ground, labor doesn't cost as much as it does above the ground.

Q. Well, very roughly it would come to around 10 per cent on the figures that I have given you so far, wouldn't it?

A. Well, I don't know if I have that straight, just exactly what you mean. Would you say it again?

Q. Well, I think you said that in order to determine what proportion of the cost, you said it would be a little easier to determine the proportionate cost of the floor? A. Yes.

Q. And you said take the number of square feet, multiply by two, add 20 per cent?

A. One fifth.

Q. Yes, 20 per cent, and that would give you the total lineal footage attributable to the floor?

A. Yes.

(Testimony of S. L. Williams.)

Q. And that was, as we figured it, about 12,600, or roughly ten per cent of your 130,000 total lineal feet, is that right?

A. It wouldn't be far off. [85]

Q. And you can't tell us how you figure the stalls or what percentage of the cost went into the stalls at all?

A. Well, of course, I figured them. I took the measurements from the plans here as I remember.

Q. From what plan?

A. From this plan I drew.

Q. Do you have the stalls showing on the plan?

A. No, I didn't have time to show them.

Q. Well, would you say that the stalls would cost as much as the floor or less than the floor?

A. Well, it wouldn't cost as much as the floor.

Q. Well, what percentage of the cost would you say of the floor would be attributable to the stalls?

A. Well, it would be a lot of guess work. It would take time to figure out.

Q. You wouldn't be prepared to give an estimate now?

A. No, I wouldn't like to, no.

The Court: When you use the expression "stall", does that mean the ordinary stalls for horses?

A. As near as I remember those stalls were box stalls, like they used to have forty years ago.

Q. You say box stalls, built with 6 x 6 posts, boxes with two inch planks? A. Yes.

Q. You must have calculated how much was stalls and how much plank?

(Testimony of S. L. Williams.)

A. I don't remember how many.

Q. Well, what about the floor of the hay loft when you saw [86] this barn five years before?

A. Well, I wasn't up in there at all.

Q. Did you look at it from the bottom?

A. Oh well, I really looked at it but I didn't pay any particular attention, no more than I sized it up. It was two-inch flooring, tongue-grooved.

Q. Is that the best type of construction of floor that you would use in a structure of this kind?

A. I think so.

Q. Are you sure you did not use that type of construction because it was the best and most expensive, rather than because you remember the floor, the kind of floor?

A. Well, I don't know as it would be much more expensive. If you use one inch floor it would have to be doubled, or should be. Take the same amount of lumber.

Q. How much would you say, Mr. Williams, it would cost to build a barn of this size in the type of modern construction that you spoke about?

A. Oh well, that would be a guess.

Q. Haven't you ever built any barns?

A. Yes.

Q. You have built the modern type?

A. I have not built any barns lately.

Q. Have you ever built a barn like this, with 10 x 10 timbers?

A. Oh, I have worked on buildings in my younger days like that.

(Testimony of S. L. Williams.)

Q. When did you build your last barn?

A. Oh gosh, I don't know.

Q. Where was it? [87]

A. The last barn that I remember working on was in California forty years ago, 1902.

Q. And you have not built a barn since then?

A. Oh, I have built small barns.

Q. When you say small barns, do you mean of the type of 6 x 6 construction you were talking about?

A. Most of them were 4 x 4.

Q. Have you repaired any barns in the last 40 years?

A. No, I have not.

Q. Then on what do you base your statement that if this particular barn had a new outside and a new roof on it, it would be just as good as a barn of modern type construction, a new barn?

A. Well, if it was built of heavy timbers and was strong, well braced.

Q. Well you are overlooking, are you not, the condition of the timbers and whether they had rotted?

A. Well, of course, I do not know whether they were rotted or not. I shouldn't think they were, though.

Q. You are also overlooking, are you not, the condition of the flooring, shall I say the flooring and hayloft?

A. Well——

Q. You did not take that into consideration in your answer, did you?

A. I do not know as flooring in the hayloft should deteriorate so fast.

(Testimony of S. L. Williams.)

Q. Are you prepared to tell us, taking an ordinary barn of modern type of construction; that is, lighter construction you have spoken about, what is the approximate square foot cost of construction of that type of barn? [88]

A. Oh, I never figure that way. I figure out lumber to build and labor and hardware.

Q. You haven't any knowledge of the square foot cost of that type of building?

A. It would be just a guess.

Q. What would your guess be, your best estimate?

A. I don't like to guess. As a rule I don't guess on jobs.

Q. You did quite a bit of guessing, didn't you, in preparing this estimate that you just put in evidence, Mr. Williams?

A. Well, not so very much. Some things, I said a while ago, I had to guess at.

Q. I would like to have you make another guess and tell us the approximate square foot cost of construction of the kind you describe, lighter type, and also in which you tell us would be just as good or about the same in value as this barn with a new roof and sides.

A. What do you mean, square foot?

Q. Isn't there a rule of thumb that contractors use, Mr. Williams, so that if you are building certain type of residence you can tell approximately what the square foot cost should run?

(Testimony of S. L. Williams.)

A. That is so in residences. It is still only a guess.

Q. But there is a rule of thumb contractors use pretty much to check figures and give estimates before they make a deal?

A. Some figure that way.

Q. It would be a lot easier to apply such a rule to a structure like a barn than to a residence, wouldn't it?

A. Oh, I don't think so. [89]

Q. You think a barn is more individualistic than a residence?

A. Well, if you take your walls on a barn of this size, I mean the walls around, and take a building half that big, you can see that you wouldn't be very near right if you took it on a square foot basis.

Q. I don't quite follow that.

A. I don't know as I can make it plain, but now the distance around that building, I mean the distance around it—

Q. Pretty close to 300 feet, isn't it?

A. Would be about 319 feet. Now a building, say half that big, or say 20 feet wide by 112 feet long, you see that would be 265 feet; 265 running feet of wall that you would have to build around that, and the other you would have only 319 feet in double the amount of building floor space.

Q. I can understand that.

A. That is why I say it is all a guess when you come to figuring by square feet of a building.

Q. All right, I do not care whether you figure

(Testimony of S. L. Williams.)

by square feet or how, but I would like to know what it would cost to build a barn of this area constructed as a modern barn would be constructed and as you have described?

A. Well, I don't like to guess at it because I can't tell you off-hand the cost.

Q. What would be the cost, let us say, of the timbers, as compared with the cost of timbers in this?

A. Well, take the posts, 10 x 10, that would be 8-1/3 feet, board feet each running foot.

Q. And if it was only 6 x 6? [90]

A. Thirty-six, would be three feet.

Q. Less than half, in other words?

A. Yes.

Q. In other words, your lumber cost would you say would be cut half if you were building of the usual type of construction?

A. Well, so far as the posts, sills, and a lot of that stuff, would be less than half, but so far as braces is concerned, they should be that big.

Q. The braces? A. Yes.

Q. Would there be metal braces in a building of that type? A. Wooden braces.

Q. The braces would be the same, in other words?

A. That would be my idea they should be.

Q. How much would it cost to build, in your opinion, a building new outside, similar to this building?

A. You mean just the siding?

(Testimony of S. L. Williams.)

Q. Just the walls, with the windows and sills and doors, etc.?

A. Not the frame work, you don't mean the posts or braces?

Q. I don't know; I am just going back to the testimony you gave a little while ago, when you testified if new sides and new roof were put on this building, it would be just as good as a new building of lighter construction.

A. I understood you meant just the siding, boxing we call it, not the frame work, that is what you meant, wasn't it?

Q. I didn't ask you that question, Mr. Boyle did.

A. I could make an estimate of that in a couple of minutes.

Q. All right, I wish you would. What was the condition of the [91] paint at the time you saw it five years ago?

A. Well, as near as I remember, it didn't look like it had been painted for some time.

Q. When you say for some time, what do you mean?

A. I should say over five years, but then I wouldn't know.

Q. In other words, the condition of the paint wasn't very good? A. No, it wasn't.

Q. And the same thing is true of the roof?

A. Well, as I said, the shingles I could see, they were curled.

Q. In short, the barn needed a new roof?

A. Well, it needed new shingles.

(Testimony of S. L. Williams.)

Mr. Levit: Now I am going to have to ask, your Honor, that the witness give us an estimation of the amount of this price that belongs into the stalls, because we will see that there were no stalls in the building, and I think that unless the witness is able to segregate the figure that he used for the stalls from his other figure, there would be no way of the court or counsel having any idea of what his estimate is on the cost of reconstruction, so that if we could take a recess now, I would like to have the witness try and give us an estimate on the cost of new sides and new roof and of the portion of this that went into making of the walls.

A. Well, I don't know as I can on the stalls. I could look it up, however, and give it to you tomorrow, if that would be satisfactory.

The Court: Well, we will take a recess at this time for ten minutes.

(Recess taken at 3:00 o'clock.) [92]

3:10 P.M.

MR. WILLIAMS

resumed the witness stand on further cross-examination by Mr. Levit.

Q. Now, Mr. Williams, are you prepared to give us an estimate on the cost of building the outside and walls of this building?

A. Not the outside wall, the siding or boxing, just the outside of the building.

(Testimony of S. L. Williams.)

Q. What did you figure that would be?

A. Well, I figured that would be about \$1254.00.

Q. Did that include the windows and doors?

A. No, that is just the one by twelves.

Q. How much would the windows and doors add?

A. Well, I don't know. If you want somewhere near the cost of that stuff, I should have a little time to figure it out.

Q. Now in addition to the cost of the floor, there was the question of the floor joists involved also, wasn't there?

A. Yes, there would be floor joists.

Mr. Levit: Now, counsel, will it be stipulated that the floor and the floor joists and the stalls have been removed from this building prior to this fire?

Mr. Boyle: Is that so, Mr. Questa, that the floor, floor joists and stalls had been removed?

Mr. Questa: Yes.

Mr. Boyle: Then how many stalls, if any, were in there?

Mr. Levit: Just a moment.

Mr. Boyle: I won't stipulate unless I can tell you definitely how many were in at the time of the fire.

Mr. Questa: At the time of the fire there were no stalls [93] in the barn.

Mr. Boyle: No floor or floor joists?

Mr. Questa: No.

Mr. Boyle: We will stipulate.

Mr. Levit: All right, and now, may it please the

(Testimony of S. L. Williams.)

Court, we at this time move to strike the testimony of this witness and the Exhibits "B" and "E", on the ground that the testimony of the witness has demonstrated that he had no proper foundation for attempting to arrive at his estimate and that the estimate he arrived at is not in accordance, or is based upon facts not in accordance, with the physical conditions of this building. The witness testified that five years before he had been employed on the property and he admits that he had no contact with the barn, except that he had been in it and casually looked at it, that he got no further information concerning the details of the interior construction after the fire from Mr. Questa, except the dimensions, that is, the actual height dimensions, so that it would appear that all that the witness knew positively about this barn was its approximate size and he saw some of the barn timbers afterward. The fact he did not know its condition is conclusively demonstrated by the fact that he has admittedly a figure of over ten per cent in there that doesn't belong there at all. Now we submit that this testimony, if offered as expert testimony, has had no proper foundation laid and that it is not entitled to any weight whatever, and we ask that it be stricken.

The Court: I think we will take that under consideration later. I am impressed it goes to the weight of the testimony; unless it would be shown [94] that all of these deductions made would bring

(Testimony of S. L. Williams.)

it below the amount alleged that the insurance was for.

Mr. Levit: Our position is simply that the only purpose of this testimony is to establish the reconstruction cost of the barn and that either it establishes the reconstruction cost of the barn as it stood prior to the fire, or it does not. Of course, if his testimony establishes reconstruction costs but with some adjustments would be different than the final figure expressed, that would go to the weight of the testimony, but our point is that the basis upon which these estimates were made is so far away and uncertain, admittedly, and based upon a casual observation largely of five years before, with no further information obtained after the fire except what he might be able to pick up in the way of burned timbers in a completely destroyed barn, that it wouldn't be admissible at all.

The Court: I prefer to consider all these matters after the transcript of testimony and briefs and arguments later.

Mr. Levit: Very well.

Q. Are you prepared to state, Mr. Williams, what, in your opinion, the amount of depreciation on a barn of this type would be per year?

A. Oh, I hardly think I could.

Q. You know it would depreciate, do you not?

A. Oh certainly it would depreciate.

Q. Well, are you prepared to say how much it would depreciate?

(Testimony of S. L. Williams.)

A. Well, no, I do not know that I could. Some buildings depre- [95] ciate one per cent a year. I have figured jobs where they took off three per cent per year.

Q. You never tried to get an FHA loan on the basis of one per cent depreciation, did you?

A. No.

Q. You know you couldn't get it, don't you?

Mr. Boyle: Objected to.

Re-Direct Examination

By Mr. Boyle:

Q. Mr. Williams, could you estimate the amount of the value of the joists, flooring, and the stalls, and then deduct that from the total amount of your estimate if it were included therein at the present time? A. Yes, I could tonight.

Q. Will you do that tonight? A. Yes.

Q. And record it tomorrow and have the matter presented to the court? A. Yes.

Mr. Boyle: That is all. Your Honor, according to our pleadings, we have alleged a certain letter, of the firm of Long & Levit, representing the Milwaukee Mechanics' Insurance Company, denying the fact it had any liability and this was alleged in my complaint, so I offer this letter in evidence.

Mr. Levit: It is attached to my answer. No objection.

Clerk: Plaintiffs' Exhibit "F".

PLAINTIFFS' EXHIBIT "F"

Percy V. Long Bert W. Levit William H. Levit

Law Offices
LONG & LEVIT
Merchants Exchange
San Francisco

February 20, 1942

William S. Boyle, Esq.,
Attorney at Law,
Gazette Building,
Reno, Nevada

Re: File #1552 - Silvo
Questa, Reno, Nevada;
Fire Loss.

Dear Mr. Boyle:

Please be advised that our client Milwaukee Mechanics' Insurance Company denies that it is under any liability whatever to your clients Silvo Questa and Jennie Questa, or to either of them, for loss by fire to their barn occurring on or about September 21, 1941. Said Insurance Company expressly denies the existence of any contract of insurance, written or oral, between it and your clients or either of them, at the time of said fire or at any other time.

Yours very truly,

LONG & LEVIT

BWL:MC.

[Endorsed]: Filed June 23, 1942.

Mr.Boyle: I also have proof of loss and you state in your letter you have admitted that such a proof of loss is filed.

Mr. Levit: In our answer. We make no point of that, [96] your Honor. I do not think it is in issue in the case at all. We object to the introduction in evidence because it simply clutters up the record. We admit a document purporting to be proof of loss is filed and raise no findings on it and I think it is not in issue in the case.

The Court: I suggest that it be filed, subject to the objection. We will rule on that later.

Clerk: Plaintiffs' "G" for identification.

Mr. Boyle: It is only an exhibit then for identification?

Clerk: Yes.

Mr. Boyle: Your Honor, at this time, as I am about to rest my case, I might offer it in evidence.

The Court: You are offering it in evidence, but we will reserve ruling.

Mr. Levit: I will withdraw my objections.

The Court: Then it may be admitted.

Mr. Boyle: We rest, your Honor.

Mr. Levit: I have the originals; suppose you withdraw those copies and I will give you both originals and amended proof of loss and you can file them.

Mr. Boyle: Then this being the case, we offer two of these and you have two that were duplicate copies.

Clerk: The two will be marked "G", "Proof of Loss" and "Amended Proof of Loss."

PLAINTIFFS' EXHIBIT G

PROOF OF LOSS

State of Nevada,
County of Washoe.—ss.

Silvo Questa, being first sworn says: That Silvo Questa and Jennie Questa were the owners of a large barn situated on the Glendale Ranch in Washoe County, Nevada; That during the first part of August, 1941 Frank Hassett as agent for the Milwaukee Mechanic's Insurance Company entered into an agreement for and in consideration of the premiums to be paid for insuring an automobile and a home and a large barn on the said Glendale Ranch; That it was agreed that the barn was to be insured for the sum of Seven Thousand Five Hundred Dollars (\$7,500.00); That Frank Hassett as agent for The Milwaukee Mechanic's Insurance Company was to deliver a policy to Silvo Questa and Jennie Questa and the said Frank Hassett was to collect the insurance premiums; That Frank Hassett did not deliver the said insurance policy as agreed upon and the barn burned down on or about September 20, 1941 and was completely destroyed; That Silvo Questa has heretofore notified the said insurance company of the loss of fire of the barn aforesaid. That this affidavit is in the form of a written notice and proof of loss by fire of a barn insured by the Milwaukee Mechanic's Insurance Company, situated on the Glendale Ranch the

property of Silvo and Jennie Questa; That the said barn is a total loss.

Dated: January 8, 1942.

SILVO QUESTA

Subscribed and sworn to before me this 8th day of January, 1942.

WILLIAM S. BOYLE,
Notary Public, Washoe
County, Nevada.

AMENDED PROOF OF LOSS

State of Nevada,
County of Washoe.—ss.

Silvo Questa, being first sworn says: That Silvo Questa and Jennie Questa were the owners of a large barn situated on the Glendale Ranch in Washoe County, Nevada; That during the first part of August, 1941 Frank Hassett as agent for the Milwaukee Mechanic's Insurance Company entered into an agreement for and in consideration of the premiums to be paid for insuring an automobile and a home and a large barn on the said Glendale Ranch; That it was agreed that the barn was to be insured for the sum of Seven Thousand Five Hundred Dollars (\$7,500.00); That Frank Hassett as agent for The Milwaukee Mechanic's Insurance Company was to deliver a policy to Silvo Questa and Jennie Questa and the said Frank Hassett was to collect the insurance premiums; That Frank Hassett did not deliver the said insurance policy as

agreed upon and the barn burned down on or about midnight September 21st, 1941 at 12:10 A. M. and was completely destroyed; that there was an incumbrance of Sixteen Thousand Six Hundred Sixty-six Dollars and Sixty-six Cents (\$16,666.66) on the ranch; that there was no other insurance thereon; that the origin of the fire is unknown; That Silvo Questa has heretofore notified the said insurance company of the loss of fire of the barn aforesaid, namely on September 26, 1941 and again demanded the policy of insurance. That this affidavit is in the form of a written notice and proof of loss by fire of a barn insured by the Milwaukee Mechanic's Insurance Company, situated on the Glendale Ranch the property of Silvo and Jennie Questa; That the said barn is a total loss; That no insurance policy was delivered to the insured to this date; that there was no change in the title, use, occupation or exposure of the barn since, 1940.

Dated Jan. 19, 1942.

SILVO QUESTA

Subscribed and sworn to before me this 19th day of January, 1942.

WILLIAM S. BOYLE,

Notary Public,

Washoe County, Nevada.

[Endorsed]: Filed June 23, 1942.

Mr. Levit: You rest?

Mr. Boyle: We rest, yes.

Mr. Levit: Now Mr. Boyle, the original proof of loss [97] was sent to Mr. Hassett accompanied by this letter of yours, is that not correct?

Mr. Boyle: Yes.

Mr. Levit: We offer Mr. Boyle's letter in evidence and ask it be marked Defendant's Exhibit 1.

Clerk: Exhibit 1.

DEFENDANT'S EXHIBIT No. 1

William S. Boyle
Attorney at Law
202-3-4 Gazette Building
Reno, Nevada
Phone 5592

January

8th

1942

Frank Hassett, Esq.

Agent

The Milwaukee Mechanic's Insurance Co.

Reno, Nevada

Dear Mr. Hassett:

I am enclosing a proof of loss in affidavit form for a large barn situated on the Glendale Ranch, Washoe County, Nevada, the property of Silvo and Jennie Questa which was destroyed by fire on or about September 20, 1941.

Very truly yours,

WILLIAM S. BOYLE

WSB:jm

[Endorsed]: Filed June 23, 1942.

Mr. Levit: Now, Mr. Boyle, do you have Mr. Hassett's letter to you of January 13, 1942?

Mr. Boyle: Yes.

Mr. Levit: May I have that please. We offer in evidence letter of January 13th from Frank Hassett, Inc., to Mr. Wm. S. Boyle. Now I may say, your Honor, that the letters are both very short. Mr. Boyle's letter, Exhibit 1, merely encloses, in affidavit form, a proof of loss for a large barn situated, etc., which was destroyed by fire on September 20th, and in reply to that letter Mr. Hassett wrote Mr. Boyle: "Dear Mr. Boyle: On my return from Las Vegas this morning, I find your letter of January 8 relative to Mr. Silvo Questa. We are returning proof of loss, as this company had no coverage on the barn." That was January 13th.

The Court: It may be admitted.

Clerk: Defendant's 2.

DEFENDANT'S EXHIBIT No. 2

Commercial Casualty Insurance Company
Organized 1909
Loyalty Group

Pacific Department
220 Bush Street, San Francisco, Cal.

John R. Cooney, Chairman of Board
Howe S. Landers, President
Wm. B. Rearden, Executive Vice-President
W. W. Potter, Vice-President
Fred W. Sullivan, Vice-President
F. E. Chadwick, 2nd Vice-President
R. W. Walbey, Secretary
A. A. Milhaupt, Secretary

Frank Hassett, Inc.
General Insurance Agency
150 North Virginia Street
P. O. Box 2419
Reno, Nevada

January 13, 1942

Mr. William S. Boyle
202 Gazette Building
Reno, Nevada

Dear Mr. Boyle:

On my return from Las Vegas this morning I find your letter of January 8 relative to Mr. Silvo Questa.

We are returning the proof of loss as this office had no coverage on the barn.

Yours very truly,

FRANK HASSETT, INC.

FRANK HASSETT

FH:lp

Enclosure

[Endorsed]: Filed June 23, 1942.

Mr. Levit: Now we offer in evidence original non-waiver agreement dated January 26, 1942, signed by Silvo Questa and Jennie Questa, and I think counsel will stipulate that the signatures are the signatures of the plaintiffs.

Mr. Boyle: The intent of that was merely, when you took the deposition, you had been permitted——

[98]

Mr. Levit: I think the document will speak for itself. We will offer it in evidence and then we would like to read it to the Court.

Mr. Boyle: All right, you read it, and I will explain it.

Clerk: Defendant's 3.

Mr. Levit: (Reads)

DEFENDANT'S EXHIBIT No. 3

“NON-WAIVER AGREEMENT”

“This Agreement entered into at Reno, Nevada, on this 26th day of January, 1942, by and

between Silvo Questa and Jennie Questa (first parties) and Milwaukee Mechanics' Insurance Company (second party),

Witnesseth:

“Whereas, first parties have served upon second party a document entitled Amended Proof of Loss, making claim on second party for loss by fire to a certain barn under an alleged agreement to insure the same, said fire being stated therein to have occurred on or about midnight September 21, 1941; and

“Whereas, second party has not and does not admit the issuance of any insurance upon said barn or the making or entering into by it or on its behalf of any agreement to insure the same or to issue a policy of insurance upon the same; and

“Whereas, it is to the mutual advantage of all parties hereto to permit second party to investigate all the facts and circumstances concerning the alleged agreement to insure, the alleged fire and claim, and to ascertain the value of the said barn and the loss and damage, if any, thereto, without delay;

“Now Therefore It Is Hereby Agreed by and between the parties hereto as follows:

“1. Second party shall be free (but not obligated) to investigate and make any inquiry it may see fit, and to take such steps as it may

be advised, with respect to any of the matters aforesaid.

“2. First parties agree to furnish to second party all information within their ability to furnish and to submit to examination under oath, with [99] respect to the foregoing matters.

“3. Anything done or to be done in connection with any of the matters aforesaid shall not constitute an admission of the existence of any agreement to insure the said property or of the existence of any insurance upon the said property, or of any liability whatever on the part of second party for the alleged loss or damage to said property; nor shall second party thereby be deemed or held to have waived, invalidated, forfeited or modified any legal rights available to it should it be ultimately determined that insurance of said barn by second party in fact exists.

“In Witness Whereof, * * * ”

etc. That will be stipulated, Mr. Boyle, will it not, in order to avoid recalling Mr. Questa, that that agreement was signed by them in your office and in your presence?

Mr. Boyle: It was. We will so stipulate that it was signed by them in my presence in my office.

MR. HASSETT,

a witness on behalf of defendant, being first duly sworn, testified as follows:

Direct Examination

By Mr. Levit:

Q. Will you state your name please?

A. Frank Hassett.

Q. Where do you live?

A. 480 Granite Street, Reno.

Q. What business are you in?

A. General agent for the Milwaukee Mechanics' Insurance Company.

Q. Where is your office?

A. 150 No. Virginia Street, Room 2.

Q. What name do you operate under?

A. Frank Hassett, Inc.

Q. You are acquainted with Silvo Questa, one of the plaintiffs in this case, are you not? [100]

A. Very well.

Q. Do you remember, beginning back about March of 1941, you wrote a policy on his new dwelling on the ranch?

A. Yes.

Q. How did you come to write that policy?

A. Well it seems to me I received a telephone call from my good friend Mark Yori and he was at the Pioneer Hotel and he told me Silvo wanted to get some insurance on his house.

Mr. Boyle: Objected to as hearsay.

Mr. Levit: Never mind the conversation.

(Testimony of Frank Hassett.)

The Court: There may be a question in respect to that. As this is a trial before the Court, we will consider all those things later. I am inclined to think the conversation——

Mr. Boyle: We will withdraw the objection.

Q. Go on then, state what Mr. Yori said to you about the policy on the house.

A. He told me Silvo was building a beautiful new home at the ranch and certainly should have some insurance and Silvo agreed he should, so I told him I would be very happy to insure it for whatever amount he designated and we agreed upon an amount of \$6500.00 and I was to go out to the ranch.

Q. Now this conversation you speak of was a conversation with Mr. Yori?

A. Yes.

Q. Was Mr. Yori an agent of the Milwaukee Mechanics'?

A. No sir.

Q. Was his son an agent? [101]

A. Yes sir.

Q. But actually all of the details of your insurance business with the Yori family, or most of it, was handled through Mr. Yori, Sr., was it?

A. Not exactly, but we discussed insurance together.

Q. Did you issue a cover note on this house policy?

A. We did issue a cover note.

(Testimony of Frank Hassett.)

Q. And that was in amount of \$6500.00?

Mr. Boyle: Objected to as not the best evidence.

Q. Do you have the note?

A. No, I might have a copy of it.

Q. Let us have the copy then. Will you have any objection to using a copy?

Mr. Boyle: None whatever.

Q. This is your office copy of cover note issued on the dwelling house policy, is that correct?

A. Correct.

Q. That was written up by you on March 25, 1941?

A. Yes.

Q. What did you do with it?

A. We mailed it to our agent, as is customary.

Mr. Boyle: We want to get that right. We wouldn't object to a copy, however, in this particular instance my clients did not receive the original. If this is done for the purpose of evading that particular note——

Mr. Levit: Not at all. We do not know what Mr. Yori, Jr. did with it. Maybe he mailed it, maybe he carried it around in his pocket. [102]

Mr. Boyle: Is it made out to Mr. Questa? We maintain he didn't get it or any one authorized to receive it for him.

Mr. Levit: Mr. Yori telephoned in for the insurance account presumably on behalf of Mr. Questa. We have already in evidence the policy, or presumably the policy, that subsequently was issued

(Testimony of Frank Hassett.)

pursuant to his order, was accepted by Mr. Questa, because he produced it and said it was his policy, so it is a fair inference Mr. Yori was acting for Mr. Questa in the issuance of this policy. I do not know whether this note was ever turned over, or the original, to Mr. Questa or not. We do wish to prove that it was made out when the order was given, the note was made out and was sent in the usual channel to Mr. Yori's son, who was the legal agent for the Milwaukee Mechanics' Insurance Company. What Mr. Yori did with it, I do not know and we do not care.

The Court: Let me suggest in all these matters it is a trial before the court and not a jury. Cover the actual facts, what they were, and the legal phases we will consider later.

Mr. Levit: The only point is that counsel's objection is well taken if it is going to be on the ground this is a copy, and we will then be forced to subpoena Mr. Mark Yori, Jr., and find out what became of the original cover note, but if counsel is going to object on that point, we can go ahead and not worry about the other phase.

Mr. Boyle: We do not say what he says is not a fact; however, we do maintain he did not get a copy of the cover note.

Mr. Levit: We offer it in evidence and ask it be [103] marked defendant's exhibit next in order.

Clerk: Defendant's 4.

(Testimony of Frank Hassett.)

DEFENDANT'S EXHIBIT No. 4

Pacific Department
60 Sansome Street
San Francisco

Telephone Kearny 4725 - Covering Note No. 27455

Firemen's Insurance Co. of Newark, N. J.	\$
Girard Fire & Marine Ins. Co.	\$
Mechanics Insurance Co. of Philadelphia	\$
National-Ben Franklin Fire Insurance Co.	\$
Superior Fire Insurance Co.	\$
Concordia Fire Insurance Co.	\$
Wisconsin Underwriters	\$
Pittsburgh Underwriters	\$
Milwaukee Mechanics Insurance Com- pany	\$ 6,500.00
	<hr/>
	Total \$ 6,500.00
	<hr/>

.....Insurance against loss or damage by fire is hereby kept covered in the above named Company and for the amount given above, subject to the printed conditions of the Standard Fire Insurance Policy of the State, Territory or Province in which the risk hereby insured is located, or, (if there be no Standard Form of Fire Insurance Policy pre-

(Testimony of Frank Hassett.)

scribed by the law of such State, Territory or Province) the printed conditions of the present Standard Fire Insurance Policy of the State of New York, shall be deemed to be a part of this cover note, except as hereinafter provided, as follows:

In favor of Jennie Questa and Silvo Questa
Loss, if any, payable to Named assured
On Class "D" Dwelling

Situate Questa Ranch about 4½ miles southeast of
City Limits of Reno, Washoe County, Nevada.

From March 25, 1941, at noon, A. M., P. M.

To cease May 25, 1941, at noon, or such time prior thereto as the Company's policy may be issued on above described risk in lieu hereof.

Dated March 25, 1941.

Broker Frank Hassett, Inc., M. L. Yori, Jr.

Reinsured Co. retains net \$.....

Insurance Map

Sheet.....

Block.....

No.....

W. W. & E. G. POTTER,
Managers

By

[Endorsed]: Filed June 23, 1942.

(Testimony of Frank Hassett.)

Q. You mailed the original of Defendant's Exhibit 4, which was an exact duplicate of it, to Mr. Yori, Jr., on or about March 25, 1941?

A. Correct.

Q. Now prior to that time had you ever written any insurance for Mr. Questa?

A. No sir.

Q. Did you subsequently go out to look at the house on Mr. Questa's property that was described in that cover note?

A. Yes sir.

Q. When was that?

A. Oh, probably 30 days later.

Q. Up to that time the policy had not been written, and when I say the policy, I mean Plaintiff's Exhibit—

A. I can give you the exact date; it is probably on this policy.

Mr. Levit: Let the record show I handed the witness Plaintiffs' Exhibit "C", and I will ask you if that was the policy finally issued to take up or to continue or to replace the cover note just introduced in evidence?

A. It replaced that cover note.

Q. When was that policy issued?

A. This policy was issued the 16th day of April.

Q. And it was dated back so far as coverage was concerned, to March 25th?

A. Correct; always made retroactive to the attaching date of the binder. [104]

(Testimony of Frank Hassett.)

Q. When did you go out to Mr. Questa's ranch to look at his house, Mr. Hassett?

A. It would be April 16th, 17th, 18th, or 19th. About around four days behind in writing policies at different times and this policy was written on the 16th day of April.

Q. You do not mean then that you were out there after the policy was written; you were out there before, weren't you?

Mr. Boyle: Objected to. This is direct examination.

Mr. Levit: I am sorry.

Q. The policy was written on what date?

A. On the 16th day of April.

Q. And when, to your best recollection, did you visit the ranch to look at the house?

A. Probably 15th, 14th, or 13th.

Q. Now, Mr. Hassett, did you see Silvo Questa on the ranch when you went out there that day?

A. Yes, he was working very hard, laying pipe, putting in a pump; had two or three employees working. Didn't have very much time to talk.

Q. Did you have any discussion with him at that time about the insurance on this new house?

A. Yes, I told him definitely, "We will hold a cover for \$6500.00." He said, "Frank, that isn't enough." I said, "I agree with you, you should have considerably more. You have a beautiful home." He said, "Well, it is not even finished yet." I said, "That is right, but for the work you

(Testimony of Frank Hassett.)

have put in on it, you should have far more than \$6500.00." We discussed it and finally arrived at \$7,000.00. Then I wrote the insurance for \$7,000.00. [105]

Q. Did you state to him whether or not on that occasion you had issued a cover note on the house?

A. I merely told him we were holding it covered for \$6500.00.

Q. Now did you have any talk with him on that occasion about his other buildings on the ranch?

A. Well, as long as he said I didn't, I would rather agree with him because I can't remember that far back.

Q. You don't recall whether you did or not?

A. No.

Q. When did you first discuss with Mr. Questa the matter of insurance on this barn?

A. Well, it was about the middle of June. I could almost hit the date.

Q. Well, give it to us as close as you can. How do you fix the date?

A. We write insurance on the State Line Country Club and their policy expired for the fire insurance on the State Line Country Club on May 21st and we pick up the renewal and I should say it would be but a week or so after we had written the renewal policy for them that I was in the Riverside bar one evening and Bert Redick told me he had no idea of the value of the contents of the State Line Club, so I asked him——

(Testimony of Frank Hassett.)

Mr. Boyle: Objected to as incompetent, irrelevant and immaterial; no issue of this case.

Mr. Levit: We are not offering it to prove the truth of any matters—merely intend this to show how he fixed the date in which he had his first conversation with Mr. Questa. The subject matter of the conversation about the State Line Country [106] Club is itself irrelevant to any issue in the case, but it does help to fix the date and that is what the witness is testifying.

The Court: He need not go into the conversation which he had on that date to fix the date.

Q. That was about when?

A. The middle of June.

Q. 1941? A. Correct.

Q. And did you see Mr. Questa on that occasion when you were in the Riverside bar?

A. I did.

Q. Tell us what took place in there.

A. I was in there to see Bert Redick in order to secure a note to take to the watchman of the State Line Club to get in there, because they were not open—I believe they opened last year around the 25th of June or a few days before—so I stopped in and picked up this note as agreed, in order to have the watchman let me go in the property and make an inventory of the contents of the State Line Club. As I walked in the bar Silvo was standing there, so I talked to him a couple of minutes. He said, “Frank, I want you to come out to my ranch and write insurance on that old barn.”

(Testimony of Frank Hassett.)

I said, "Silvo, it will be a pleasure to write all your insurance." He said, "All right, come out." I said, "I am going up to the State Line Club now." I believe I told him the reason. I said, "Excuse me a minute." I had to go in the office and get the note from Bert Redick. I came back and discussed it a few more minutes and told him I was going up to the State Line Club then and possibly wouldn't be back until tomorrow or maybe I [107] would stay there over the week end. I said, "I will not be back for a day or two." I said, "Silvo, do you want me to hold it covered for you until I come out to the ranch?" He said, "No, wait until you come out and see it."

Q. Was there any other discussion on that occasion as to any amount of insurance that Mr. Questa wanted? A. No.

Q. Was any amount mentioned at all?

A. No sir.

Q. By either of you? A. No sir.

Q. Was anything mentioned about rates?

A. No sir.

Q. Have you given us to the best of your recollection the entire conversation on that occasion?

A. Yes sir.

Q. When did you next see Mr. Questa and discuss this insurance with him?

A. Well, two or three weeks, somewhere in there, a little later on Virginia Street I saw Silvo.

Q. Had you been out to the ranch?

(Testimony of Frank Hassett.)

A. Not yet.

Q. Did you have any conversation with Mr. Questa?

A. Yes, he asked when in hell I was coming out to the ranch.

Q. And what did you say?

A. I told him I was sorry, I had been too busy, tried to cover too much territory in the State of Nevada and just couldn't get out but would be out in the next day or two. [108]

Q. Was anything said on that occasion about value of the barn or amount of insurance?

A. No.

Q. Was anything said about rates?

A. No.

Q. Was anything said on that occasion as to whether Mr. Questa wanted you to keep the barn covered? A. No, I didn't ask him.

Q. Now what happened next in connection with this barn insurance?

A. Well, I finally got out to the ranch.

Q. How long was it after this last conversation?

A. Well, I don't know, but it was approximately around the 10th—either the first or second week of July, definitely.

Q. How do you fix that date?

A. By realizing that I met Silvo about the 27th of July in the Club 116. I was going in there for an early dinner about 5:30 or quarter to six.

Q. Just a moment, we will come to that later.

(Testimony of Frank Hassett.)

I want to get these in order. You went out to the ranch then a few days or a couple of weeks prior to July 25th or 26th? A. That is right.

Q. What happened when you went out to ranch?

A. Just exactly the same as Mrs. Questa said.

Q. Will you tell us please in your own words?

A. Well, I went out there with the idea of seeing the barn that we discussed the insurance on and Silvo wasn't home so Mrs. Questa very graciously showed me all thru their beautiful home and I commented on the beautiful place. [109]

Q. That was the new home you had already insured?

A. That is right. So she told me I just missed him about 10 or 15 minutes, as I recall, and she wasn't sure whether he would be back in about an hour or probably late in the afternoon. I said, "All right, I will see him down town."

Q. Was anything said on that occasion between you and Mrs. Questa as to insurance?

A. Well, she said—it seems to me I told her I came out to talk to Silvo about insurance on the barn. She replied, "I know you did, Mr. Hassett, but I don't have anything to do with that; Silvo takes care of that, so you will have to see him."

Q. What about this meeting that took place at Club 116, about July 26th?

A. I think it was July 27th. We received an order, telephone call, from Brown Motors, one of our insurance agents, on the 25th of July to write

(Testimony of Frank Hassett.)

public liability and property damage on a station wagon that had just been bought by Silvo Questa, so we placed the insurance and we wrote the policy and so we always, as general agents, mail the policies direct to the agents who give us the orders, so naturally we, in the course of business, got the policy out and mailed it down to Brown Motors to be delivered to Questa. Then about two days later I was walking in Club 116, going back to the dining room to have dinner, and Silvo was standing in front and he called me and he bawled me out, in a very nice, gentlemanly manner, "Frank, when in hell are you going to come out to the ranch and insure the barn?" I said, "Silvo, I should have been there about two weeks, I know that, but I couldn't get there." I said, "Silvo, I am trying to [110] do too much, I should have gone out the next day." Silvo said, "Will you come out tomorrow or the next day?" I said, "I will do my best." I said, "Silvo—" I don't know whether now he asked me first or I told him about it first, but we started to talk about his new station wagon at the same time. I said, "We got a call from Brown Motors to insure for public liability and property damage, what about fire and theft?" and Silvo got hold of me and said, "Didn't you get that?" I said, "No, I didn't." He said, "Believe me, I thought that you got it because I told Brown Motors to give you all the insurance," and about two days later we got a call from Mr. Michaels, giving us the fire, theft, and

(Testimony of Frank Hassett.)

collision and telling us that he meant to heretofore, so we dated that policy back to the 25th.

Q. Was anything said at Club 116 July 27th with regard to the amount of insurance Mr. Questa wanted on the barn? A. No.

Q. Was anything said at that time with regard to any insurance—insurance on the barn at that time?

A. I didn't get that.

(Question read.)

A. Oh no, we didn't talk about that. I told him I would merely come out to the ranch as quick as possible, possibly the next day or within the next two weeks, but he didn't make any mention of the barn.

Q. When was it, if you know, that the book-keeper from your office went out to the ranch to collect the premium on the new dwelling house policy?

A. Well, that apparently would be the date of that check, August [111] something.

Q. Well, the record will show the check was dated August 16th. Is that according to your recollection? A. I imagine it is.

Q. And that check for \$75.00 was on account on premium of \$175.00?

A. \$189.00 I believe was the premium, \$175.00 for the fire and \$14.00 for the extended coverage endorsement.

Q. In other words, the premium you stated, the type of policy—

(Testimony of Frank Hassett.)

A. \$175.00 and \$14.00 which is premium for the extended period.

Q. Now did you see Mr. Questa again after the 27th day of July and prior to the fire?

A. Not that I recall.

Q. At any time prior to the fire was any amount mentioned between you and Mr. Questa as to the amount of insurance that was to be carried on the barn? A. No.

Q. Was any amount mentioned as regards the amount of premium or rate?

A. No, he never inquired the rate; in fact, he never asked me the rate for anything, just placed the insurance and we wrote the policy.

Q. Now, Mr. Hassett, you didn't, I take it, get out to the ranch prior to the fire?

A. I got out there once and Silvo wasn't there.

Q. I mean after July 27th?

A. No. It wasn't July 27th I was out there.

Q. I know it wasn't, but I mean you didn't go out after July 27th? A. No. [112]

Q. Did you at any time, prior to the fire, write out any covering note or memorandum of insurance with regard to this barn?

A. No, I did not, but since that time and after getting better acquainted with the way the people talk, I think maybe I should have made a mental memorandum.

Q. For how much insurance?

A. Well, I think—in other words, I think if I

(Testimony of Frank Hassett.)

got out there deliberately to write the insurance, I could have written another two thousand dollars.

Q. Was the amount of two thousand dollars ever mentioned between you and Mr. Questa prior to the fire?

A. No, no amount was mentioned until after the fire.

The Court: Just a moment. I didn't exactly understand one expression of the witness. I would like to have you explain what you mean by "mental memorandum."

A. Well, after growing better acquainted with Silvo as time went on, I think what Silvo meant for me to do the first time I met him was to go out and see the barn and whatever I thought right for it I should write on it without any further conversation with him and I didn't, unfortunately, understand his language at that time.

Q. You have related the conversations, I take it, Mr. Hassett, as they occurred, to the best of your recollection? A. Yes sir.

Q. And what you said just now to the Judge is something you have thought about the conversations in your own mind later? A. Correct. [113]

Q. Now did you have a talk with Mr. Questa after the fire? A. Yes indeed.

Q. You had a talk with him after the fire?

A. I did.

Q. Will you describe when that took place and where?

(Testimony of Frank Hassett.)

A. In my office, about two or three days after the fire, because Silvo came in and asked me if I had learned about the fire, because he had been away hunting so he didn't know about it for a couple of days after the fire, so he came in immediately.

Q. Came into your office?

A. That is right.

Q. Tell us the conversation that took place then.

A. Well, naturally, Silvo, after inquiring if I knew about the fire, I said, yes, I read about it, so then he asked me, he said, "Frank, am I insured or not?" I said, "No, Silvo, unfortunately for you, as far as we are concerned, you are not."

Q. What did he say then?

A. Naturally he grew very peeved. I said, "Silvo, in all my experience, this is the first time anything like this has ever happened to me; it is nobody's fault but my own, one hundred per cent. You told me you wanted me to go out, you told me again, and you repeated it the third time. I was out there once and unfortunately you were not there, and yet that still is no justification for me in four or five months' time not being able get three or four miles out from town, but at the time I was so busy and had so much to do I couldn't get out. I thought about it a million times but," I said, "I won't be satisfied with this [114] matter, I will submit the entire deal to our company and let them decide. They are the only one that can decide."

(Testimony of Frank Hassett.)

Q. Did Mr. Questa say anything about the amount of insurance at that time?

A. Yes, he told me had I come out he would have insured for four thousand dollars.

Q. Did he say anything about replacement costs?

A. No sir, we didn't discuss that. Oh yes, he said, "I can't replace it for twice that much."

Q. Now do you recall a subsequent conversation with Mr. Questa in regard to this burned barn, the fire?

A. Oh yes, Silvo came in the office frequently and we would meet and discuss it. He mentioned about my offer to take him to San Francisco, which I did on two different occasions.

Q. Did Mr. Questa say anything to you about the amount that would be involved to your company in premiums if they recognized this liability?

A. Silvo told me if the company would recognize it, he certainly would be a good boster for us and me in particular.

Q. Was any amount mentioned in that conversation?

A. Well, naturally he said probably more than match the amount.

Q. Was the amount mentioned?

A. I don't think he mentioned it because he already stated the amount of four thousand dollars and I think he might have meant a similar amount.

Q. Did you have any conversation whatever with

(Testimony of Frank Hassett.)

Mr. Questa concerning insurance on the stone house, the old house, before the fire? [115]

A. Yes, before the fire—no, after the fire.

Q. When did you have your first conversation with Mr. Questa with regard to insuring the old house? A. The date of our policy.

Q. What date was that?

A. September 30th.

Q. 1941? A. Yes.

Q. And where did that conversation take place?

A. In Colbrandt's. I went in there about 11:00 or 11:30 for lunch and I met Silvo.

Q. What was the conversation?

A. Well, we talked for a couple of minutes. He said, "I haven't any insurance out there—" and I thought he called it the old house, but I since learned he calls it the rock house, and the old barn.

Q. That is the small barn?

A. Yes, and the contents; so I said, "Well, Silvo, now listen, we are going through one argument right now and I hope it works out fine for both of us, and why don't you give me the order now, authorizing me to write a stipulated amount of insurance on each of those items." He said, "All right." So I wrote them down on a piece of paper, and that is the date of the policy.

Q. The policy was issued the same day?

A. No, not issued the same day. We very seldom succeed in issuing a policy the same day we get the order.

(Testimony of Frank Hassett.)

Q. But it is issued as soon as you can get at it thereafter?

A. That is right, as of that date. [116]

Q. Was it the first conversation you had with him concerning insurance on the stone house?

A. I wouldn't say the first one. It was the only time he authorized us to write any insurance on the stone house.

Q. Do you recall whether insurance on the stone house was mentioned at any of these prior conversations when the policy was talked about?

A. He might have, I can't recall.

Q. Did you issue a cover note on the stone house? A. Yes.

Q. Do you have that?

A. No, I did not bring that with me, but this policy merely replaced the cover note, the same thing. That was merely to wait for the couple of weeks probably, because we were so far behind at that particular time.

Q. Did you issue the cover note the same day?

A. Oh yes—no, I wouldn't say that—issued the following day.

Q. Within a day or two? A. Yes.

Q. What did you do with the cover note?

A. It should have been mailed to Mark Yori, Jr.

Q. And is that in accordance with the usual custom of your office when you are giving firm orders for insurance?

A. Yes, when it is placed thru an agent.

(Testimony of Frank Hassett.)

Q. I mean as far as issuance of cover notes is concerned?

A. It is customary, yes, but lots of times it takes two or three days and then I might write the policy without writing the cover note. [117]

Q. But when you are going to be a substantial time? A. Then we write a binder.

Q. You mean a cover note?

A. Or a cover note.

Q. I mean the words mean the same thing?

A. Correct.

Mr. Levit: That is all.

Cross-Examination

By Mr. Boyle:

Q. Mr. Hassett, did you insure some onions down there? A. Yes, sir.

Q. Do you remember the amount?

A. No, not off hand. It seems to me it was two thousand and increased to three and four and kept on increasing.

Q. Did you issue a policy?

A. No sir, just cover notes.

Q. And you then didn't issue policies because the onions had been disposed of?

A. Correct.

Q. And under those circumstances you don't believe in issuing policies, is that correct?

A. Not one that is going to be just temporary coverage. It costs too much money to write a policy and cancel the contract. It is so much easier

(Testimony of Frank Hassett.)

to write a cover note when it is only temporary; wouldn't write a policy, will write a binder.

Q. Among statements made by you at the present date being so different from Mr. Questa's, you believe Mr. Questa is mistaken when he said he wanted you to carry insurance of \$7500.00?

A. On the barn? [118]

Q. Yes.

A. Well, he never made mention of any figure to me on that barn that I can recall, until after the fire.

Q. And then the time he first met you mentioned that he did not state he wanted insurance on the barn of \$7500.00? A. No, I don't recall.

Q. He could have?

A. I don't see how he could have without my recalling it, I really don't, because I would have made a memorandum of it immediately because I was going up to look and I don't like to carry anything like that in mind.

Q. When you said you made a mental memorandum a few minutes ago, what time was that you stated to yourself you should have made a mental note? A. After the fire.

Q. What would you have made a mental note of prior to the fire of things Mr. Questa told you so you would have a mental note?

A. Oh, just ordinary notes that a man my age can recall.

Q. Well, you are not very old, are you?

(Testimony of Frank Hassett.)

A. Sometimes.

Q. How old are you? A. Forty-nine.

Q. You can remember very well, you can remember as well as when you were twenty-one, can you not? A. Possibly.

Q. You remember going out to the ranch, do you not? A. Yes sir.

Q. How do you construe the vast difference in the testimony of [119] Mr. Questa and Mrs. Questa, with relation to the time when you say you were there in July and they maintain you were there in August, August 15th?

A. I am unable to explain it. I have been trying to rack my brain after I heard them both testify to that time, because I can recall distinctly talking to Silvo and telling Silvo at Club 116 that I had been out and he said, "Yes, I know you have been out there but that doesn't do me any good because I wasn't there" and that was about two days after we received the order from the Brown Motors for his automobile policy.

Q. When Mr. Questa had seen you after the fire, how do you explain the conflict in testimony between you and him, such statements, that is for him not to worry and it was for you to worry from that time on and you put your hand to your head and said, "Oh, Jesus, it is all my fault."

A. I didn't say that because I don't talk that way and don't act that way.

Q. You did use "hell" two or three times?

(Testimony of Frank Hassett.)

A. I couldn't act that way, put my hand to my head that way; I would never do it, I would never do it.

Q. All the statements made by Mr. Questa that you made relative to this barn were not made by you, is that so? A. Quite right.

Q. Now with relation to the statement made by Mrs. Questa that you were out there in August of 1941, that too, then, is not correct, is that so?

A. The time is not right. The time does not agree with the time of my memory because I recall talking to Silvo about two or [120] three nights after July 25th, which is the date of the first automobile policy, both of them now, but the first, as I explained covered public liability and property damage and a couple of days after that Silvo proved that he wanted me to write all his insurance by his calling Brown Motors and making them give me the balance of the automobile insurance, and I recall talking to Silvo at that time about having been out there.

Q. Do you recall anything being said to the effect that you had been running up and down to Las Vegas so much that it had slipped your mind?

A. To go out there?

Q. Yes.

A. No. I told him I had been travelling around the State so much I didn't get time to get out to the ranch.

Q. And you didn't say anything about forget-

(Testimony of Frank Hassett.)

ting the matter of insurance. You already said you were out there in July? A. That is right.

Q. And you spoke to him after that, did you not, on two occasions? A. On two?

Q. Yes, you said you spoke to him at Club 116 and Colbrandts.

A. Colbrandts was after the fire.

Q. Also Club 116 was after the fire?

A. No, that was before.

Q. Did you not mention to Silvo for him not to worry about the matter, that it was your worry from now on? A. Oh no.

Q. You didn't say such a thing? [121]

A. No, I didn't use that phraseology. What I did indicate to Silvo was I remember telling him he didn't have a case. I should have been out there within a four-month period between the first time he told me and the fire, that no one could hardly understand why a man couldn't get out to a ranch as nice as his place and with his trees, three and a half miles out of town more than once in three months, but I said I wouldn't assume the responsibility and be the judge of the matter, I would submit the entire matter to San Francisco and let the company decide.

Q. That was the entire story, as you understood it? A. Yes.

Q. With relation to that mental note that you said you should have made after having known Mr. Questa as long as you have after the fire and

(Testimony of Frank Hassett.)

also knowing his system of doing business, you would have insured the building for the amount you considered it worth and let it go at that?

A. I felt that Silvo—if I had been down to the ranch I could have written another two thousand dollars.

Q. In other words, it was plain enough to you that he wanted you to insure the hazard at the same rate and in the same manner and in the same company as he had done business with you?

A. He never indicated anything of the kind. He indicated he wanted me to write all his insurance, that he indicated plainly, not once but many times.

Q. Then if you were to go back and write out an insurance policy, as you said you should have made a mental reservation and done so, that would have been the form of insurance you should have made out with the Milwaukee Mechanics' for two thousand [122] dollars?

Q. I would not have mentioned any name because Silvo never was familiar with the name of any company I represented. He was relying upon me.

Q. As representative of the Milwaukee?

A. I wouldn't say that.

Q. Any way your company?

A. My company that I represent.

Q. And you represent the Milwaukee Mechanics', is that right? A. Yes.

(Testimony of Frank Hassett.)

The Court: We will take a recess at this time until tomorrow. This case will be continued until tomorrow, June 24, at 10:00 o'clock. All witnesses should return.

(Recess taken at 4:15 P. M.)

Wednesday, June 24, 1942
10:00 A. M.

Appearances: Same as of June 23rd.

Mr. Levit: Your Honor, Mr. Hassett just phoned he is not feeling very well, but he will be here a little later and I told him we would go ahead with another witness.

The Court: All right. You have the other witness you had a few questions to ask. He is back again.

MR. WILLIAMS,

having been previously sworn, testified [123] as follows:

Re-direct Examination

By Mr. Boyle:

Q. Mr. Williams, yesterday we were discussing various dimensions and also the sizes of timber, etc., and you had given a report of the amount of feet of lumber and also the labor it would take to construct that barn, is that so? A. Yes.

(Testimony of S. L. Williams.)

Q. Now after that we suggested that you retire and take the amount of board lumber in the floor and also the stalls and the cost to install them, to be deducted from your estimate, so that you might estimate what it would be without the floor and stalls, is that what you understood? A. Yes.

Q. Are you prepared to give a report on it?

A. Yes. Shall I read this?

Q. Yes.

A. 225 lineal feet 10 x 12 sills, that makes 2250 feet board measure; 270 pieces 3 x 8; 16 floor joists; 8,640 feet plank flooring, 12,690 feet; 18 stalls, 14,832 feet. Now that makes a total of 38,412 feet.

Q. What would be the cost of that, installing it, if you so figured it in your first computation?

A. Well, I have it here. The cost of the lumber at 38,412 feet, \$1805.36; hardware, \$28.00; labor, \$1380.00; tax, insurance, \$133; contractor's profit, \$329.63.

Q. Is that your total now?

A. No, the total would be \$3,625.99.

Q. That is from \$3,625.99, you would deduct that from your [124] figure you had presented to the court yesterday?

A. That is the cost of stalls, floor joists, plank floor, the stalls.

Q. And that would be deducted from your figure, in order to bring it up to this condition it was at the time it burned? A. Yes.

(Testimony of S. L. Williams.)

Q. Mr. Boyle: You may cross-examine.

Re-cross Examination

By Mr. Levit:

Q. What types of board did you figure in the walls of this barn?

A. You mean the exterior siding?

Q. Yes.

A. I figured one by 12 and one by four batten.

Q. Where did you get the information that that was what the barn contained?

A. Well, my memory mostly, what I see.

Q. Five years before?

A. Something like that, I don't remember exactly.

Q. Are you prepared to swear now that that is the lumber that was in the barn?

A. Well, I am almost certain, yes.

Q. What about the metal rods that you figured? You figured a lot of metal rods, didn't you?

A. Yes.

Q. How did you know how many of those there were?

A. Well, I figured there would be a brace over each post, 10 x 10 post.

Q. You couldn't see that from the floor of the barn, the bottom floor, could you? [125]

A. Well, I couldn't see it but I did find some of the old braced lumber and rods along the river bank.

Q. And you just figured then the floor was so constructed?

(Testimony of S. L. Williams.)

A. Well, it wouldn't stand; it had to have some support.

Q. And you assumed that was the type of support?

A. That was the way I figured it, yes.

Q. You didn't see that, of course, when you were there five years ago?

A. I didn't see a brace over each column, no.

Mr. Levit: That is all.

MISS LENA PORTA,

a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination

By Mr. Levit:

Q. State your full name please?

A. Lena Porta.

Q. Where do you live?

A. 403 West Third Street, Reno.

Q. What is your occupation?

A. I am secretary for Frank Hassett.

Q. How long have you been employed by Mr. Hassett?

A. A little over a year.

Q. Were you employed by him in September of 1941?

A. Yes sir.

Q. Will you explain to the court please where your office is in relation to Mr. Hassett's office?

A. Yes; there are two rooms adjoining and

(Testimony of Miss Lena Porta.)

there is a door in between and that door is nearly always open and it is 18 feet from his desk to mine.

Q. You recall I asked you to check that distance yesterday? [126] A. Yes.

Q. Do you recall an occasion in September, around the 24th or 25th of September of 1941, when Mr. Questa, one of the plaintiffs in this case, came to call on Mr. Hassett? A. Yes sir.

Q. You know Mr. Questa, do you?

A. I do.

Q. Is that the gentleman behind you?

A. Yes, that is Mr. Questa.

Q. And do you remember what time of day it was approximately?

A. No, I can't remember.

Q. Well, at any rate, you remember Mr. Questa coming in to call on Mr. Hassett. Did you announce him or did he just walk in?

A. No, I believe Mr. Hassett saw him and told him to come in.

Q. Saw him through the open door?

A. Yes.

Q. And you were working on your own desk at the time? A. Yes sir.

Q. Did anything occur during that conversation that called it to your attention? A. Yes sir.

Q. What was it?

A. Well, as I say, he went in there and started to talk. I didn't hear the first part of the con-

(Testimony of Miss Lena Porta.)

versation, but after he had been in there a few minutes he raised his voice and seemed quite angry about something and I heard him say, "That is a dirty trick for anybody to play, Frank. I told you three times to come out and if you had come out there I would have four thousand dollars in- [127] surance on the barn and I know it is worth over \$7500.00," and that is about all.

Q. Did you overhear any other part of the conversation? A. No, I don't think I did.

Mr. Levit: You may cross-examine.

Cross-Examination

By Mr. Boyle:

Q. Kindly repeat the exact words, as you recollect them, that were spoken first by Mr. Hassett to Mr. Questa and then by Mr. Questa to Mr. Hassett.

A. The first thing I heard was what Mr. Questa said, "That is a dirty trick for any one to play, Frank", and he also said, "I told you three times to come out and if you had come out there I would have had four thousand dollars insurance on the barn and I know it is worth over \$7500.00."

Q. When you heard that conversation, was that the only part that you heard of the entire conversation? A. Yes sir.

Q. How long did that take?

A. Oh, that only took a few minutes.

Mr. Levit: You mean the whole conversation or just what she told you about?

(Testimony of Miss Lena Porta.)

Mr. Boyle: The whole conversation that took place during the meeting.

A. I think he was in there about ten minutes.

Q. And you were 18 feet apart, you say?

A. Yes.

Q. And the door was open? A. Yes. [128]

Q. How long was he in there before that particular conversation took place?

A. Oh, three or four minutes.

Q. Then during that time they didn't stand together and say nothing, did they?

A. They talked but I had my own work to do and was busy.

Q. But you know they were talking about insurance?

A. I guess they must have been; I couldn't say for sure.

Q. You didn't hear what Mr. Hassett said to Mr. Questa, did you? A. No.

Q. Until you heard Mr. Questa raise his voice?

A. That is right.

Q. They might have been talking about other things and you wouldn't know it?

A. Could be.

Q. But all you heard was the remark you said you attributed to Mr. Questa? A. Yes.

Q. About asking him to come down three times and if he had come down he would have had four thousand dollars insurance, is that it?

A. Yes sir.

(Testimony of Miss Lena Porta.)

Q. Have you charge of the records in your office? A. What records?

Q. The records of this case are in your custody?

A. Daily records on fire insurance.

Q. Have you the reports on this case you sent to San Francisco?

Mr. Levit: What reports? [129]

Mr. Boyle: On the fire proposition.

A. I don't believe I saw any reports.

Q. Did you make out any; aren't you a stenographer?

A. Yes, but I didn't make out any reports.

Q. You say you have been employed there a year? A. Yes sir.

Q. How many girls are employed in the office?

A. There are two now.

Q. How many then?

A. Just I and the bookkeeper, a boy.

Q. And you would do the correspondence, would you not, for the firm? A. Yes.

Q. You were the stenographer?

A. Yes sir.

Q. And you would file away reports?

A. We had a girl come in some time to do filing.

Q. But nevertheless you did the correspondence?

A. Yes sir.

Q. And you took care of all correspondence?

A. Yes.

Q. Have you the reports that you had written

(Testimony of Miss Lena Porta.)

in to San Francisco or elsewhere from this firm, relating to this fire?

Mr. Levit: Just a minute. The witness has already testified so far as she knows there were no reports and she didn't write any and we object to the question as not proper.

Mr. Boyle: It is the matter of the fire and ramifications thereof and I have a right to go into reports to save [130] time and question the credibility of the witness.

The Court: I will permit the examination.

Q. You testified that you were the secretary?

A. Yes sir.

Q. There were no other stenographers there?

A. No.

Q. And you took care of all correspondence of Mr. Hassett's, did you not?

A. As far as I know I did.

Q. That took place in the office? A. Yes.

Q. Have you a file in the office pertaining to this matter?

A. We have a file for Mr. Questa, yes sir, but I don't remember any reports about the fire.

Q. If there were any reports written you would have written them?

A. If I would have written them, I am very sure I would have remembered.

Q. Were there any reports made to the San Francisco office? A. I do not know.

Q. If there were, you could find them, couldn't you?

(Testimony of Miss Lena Porta.)

Mr. Levit: Not unless they were in writing.

Mr. Boyle: We presume they are in writing; certainly they wouldn't be sent down orally.

Mr. Levit: I don't think it is proper cross-examination.

The Court: You may examine.

A. I don't remember seeing any reports in the file.

Q. Have you such a file known as the Questa file in your office? [131]

A. Yes.

Q. Can you produce it?

A. Yes.

Q. Will you bring it up?

A. We have a file, yes.

Q. Can you get it and bring it up here?

A. I suppose so.

Mr. Levit: Those files belong to Mr. Hassett; they do not belong to this witness. Mr. Hassett is here.

The Court: I think that is true. You can ascertain if the files exist.

Mr. Boyle: That is not a matter of anything personal. We are not suing Miss Porta or Mr. Hassett. We are suing the Milwaukee Insurance Company and they, as representatives of the insurance company, are merely agents, servants of the insurance company; consequently, their identity is lost and we are suing the Milwaukee Mechanics' Insurance Company, and consequently when we ask, we ask it of the Milwaukee Insurance Company.

(Testimony of Miss Lena Porta.)

Mr. Levit: Mr. Boyle, I would like to say right now, for the record, you are more than welcome to any reports made to the company by Mr. Hassett. I merely object—this is not the proper way to obtain them, from this girl. They are not her reports, she is only the secretary and the reports do not belong to her; they are Mr. Hassett's, and I will instruct Mr. Hassett to bring you any reports you want, if there are any.

The Court: I will permit the examination whether this witness knows if any such reports were made.

Q. You said you do not remember whether or not any reports were [132] made?

A. I did not see any.

Q. You do not remember any report being made by the agency of the Milwaukee Insurance Company to any headquarters of the Milwaukee Insurance Company? A. No sir.

Q. How many times, to your recollection, did Mr. Questa come into your office, that you recollect?

A. During all the time I have been there?

Q. Yes.

A. Oh, let's see—oh, about four or five times.

Q. Four or five times that he came into the office? A. I think so.

Q. Kindly state the times, the four or five times he came into the office, giving your recollection of the dates and who were present.

(Testimony of Miss Lena Porta.)

A. Well, I can't remember the first time, but the last time he came in, as I said, that day I overheard the conversation, and then he came in about two times after that, two or three.

Q. Then that would be three times he went to the office?

A. And I can't remember the other times.

Q. You say after he came in after the fire, he came in once and then twice more, is that it?

A. Yes.

Q. Then that would be three times after the fire? A. Approximately.

Q. Do you remember how many times he came before the fire, at any time? [133]

A. He came in all right but, oh, about two times. I can't remember when it was though.

Q. Did you make any notes as to the time when he came in, or did you make any reports or writings pertaining to his visits? A. No, I did not.

Q. Do you know what he came in for, of your own knowledge?

A. No, he always spoke to Mr. Hassett when Mr. Hassett was in. He didn't say anything to me.

Q. Then you don't know anything about his visit there, as to what the purpose of his visit was?

A. No sir, except the last time he came in, and that was to bring us a check.

Q. When was the last time he came in and brought you a check?

A. Let's see—I think it was about two weeks ago, not very long ago.

(Testimony of Miss Lena Porta.)

Q. And after the fire occurred and after the visit of Mr. Questa, in which you said he raised his voice, how many times did he come into the office for the purpose of insurance on other buildings, if you know? A. On other buildings?

Q. Yes, if you know?

A. Well no, I don't know.

Q. How many times then did he bring checks into the office after the fire?

A. After the fire—only once that I know of.

Q. How long after the fire was that?

A. Well, let's see—it was two weeks ago—it was about eight months.

Q. It was about eight months ago? [134]

A. You said how long after the fire did he bring in the check?

Q. Yes. I mean after the fire took place in September.

A. He came in just two weeks ago and brought a check.

Q. At the time you said Mr. Questa raised his voice, it naturally attracted your attention to a great degree, did it not? A. Yes sir.

Q. And naturally you listened?

A. I couldn't help it.

Q. And naturally you listened to the reply or retort on the part of Mr. Hassett, didn't you?

A. I don't remember hearing anything.

Q. As a matter of fact, he did say something, didn't he? A. Oh yes, he said something.

(Testimony of Miss Lena Porta.)

Q. What did he say?

A. I don't remember.

Q. How is it you can remember so plainly what Mr. Questa said and not what Mr. Hassett said?

A. Because Mr. Questa was excited and spoke very loud.

Q. And how did Mr. Hassett reply?

A. Not loud enough for me to hear.

Q. Did you talk your testimony over with any one before you came into court? A. No sir.

Q. Not a soul? A. No.

Q. No one spoke to you?

A. I spoke to the lawyer. Mr. Levit asked me to be a witness.

Q. When was the first time you informed them about this conver- [135] sation?

A. The first time I told them I had heard?

Q. Yes.

A. It was some time last fall. In September he had come there. Mr. Levit was there and they asked me if I seen him come in and heard anything.

Q. When you say last fall, when did Mr. Levit come to your office on this case?

A. I don't remember—it was about a month or two—October or November, I believe; I am not sure of that.

Q. October or November? A. Yes.

Q. Do you remember having received proof of loss from Mr. Questa in your office? A. Yes.

Q. Was Mr. Levit's visit to your office prior to

(Testimony of Miss Lena Porta.)

the time of receiving of proof of loss or was it after?

A. I think it was after.

Q. You think it was after receiving proof of loss? A. I think so.

Q. Then you are mistaken as to the time—it couldn't have been in the fall?

A. I really don't know.

Q. Let me show you proof of loss and let that refresh your mind as to the time.

A. I saw just one proof of loss.

Q. Well, even one then. Now you will observe if you received the proof of loss that these were not mailed until quite a long [136] time after the first of the year, do you recollect that?

A. I wasn't sure when it was.

Q. Then you might have been mistaken?

A. Yes, I might have.

Q. And you could have been mistaken in your other testimony? A. About what?

Q. About other things that happened?

A. No.

Q. You are sure about that?

A. I am quite sure.

Q. But you are not sure about the conversation had by Mr. Hassett and Mr. Questa, you couldn't hear that?

A. I heard only what I testified to.

Q. You say you were 18 feet away and couldn't hear?

(Testimony of Miss Lena Porta.)

A. I was busy and tried not to listen.

Q. Now going back to Mr. Levit's visit to the office, do you want to correct that with relation to his visit here pertaining to this fire?

A. I said I don't know when it was. I can't remember.

Q. You said you spoke the matter of testimony over, the testimony you have given, over with Mr. Levit and you said you testified to it in the fall of 1941?

Mr. Levit: No, she said she thought it was then, but she wasn't sure.

Q. Do you want to correct that?

A. Correct what? I say I don't know; I am not sure when he came there. I can't remember.

Q. You are not sure? [137]

A. No, I know he was there, that is all.

Q. As a matter of fact then it was after you received proof of loss? A. I think it was.

Q. And it wasn't in the fall?

A. It couldn't have been.

Q. You want to correct it to that extent?

A. Yes.

Mr. Boyle: That is all.

MR. HASSETT

resumed the witness stand on further re-direct examination by Mr. Levit:

Q. Mr. Hassett, what companies or underwriters do you represent in your office?

A. The Milwaukee Mechanics' Insurance Company, Commercial Casualty Insurance Company, Lloyds of London, and then we, of course, have occasion frequently to place insurance with other markets when, for instance, we see a risk that we do not like the entire liability, I have agents in San Francisco and Los Angeles and I will divide the liability with them.

Q. But so far as having policy issuing authority or binding authority is concerned, that would apply to the first group you mentioned?

A. Correct.

Q. Which of those groups or underwriters that you have mentioned are fire insurance as well as other forms of insurance?

A. All but the Commercial Casualty.

Q. And you have binding authority for all of them? A. Yes. [138]

Q. For fire except Commercial Casualty?

A. Right; they are only casualty.

Mr. Levit: That is all.

Mr. Boyle: No re-cross examination.

MR. JAMES CORICA,

a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination

By Mr. Levit:

Q. What is your name, please?

A. James B. Corica.

Q. Mr. Corica, you live in Reno, do you?

A. Yes, sir.

Q. What address?

A. 515 Imperial Boulevard.

Q. How long have you lived here?

A. Twelve years.

Q. What is your business? A. Insurance.

Q. And be more specific as to the company and insurance.

A. I am manager for L. R. Eby & Company, Reno office, General Agents.

Q. When you say "general agents", you mean that you represent companies for the entire State of Nevada, insurance companies? A. Yes sir.

Q. The same way Mr. Hassett represents the companies he spoke about? A. Yes sir.

Q. Without going into detail, tell us some of the companies you represent. [139]

A. Occidental, Pacific National Fire Insurance Company, Western Assurance Company, Occidental Indemnity Company, Hay Fire and Marine Insurance Company.

Q. How long have you been in the insurance business? A. Nineteen years.

(Testimony of James B. Corica.)

Q. Have you ever represented the Milwaukee Mechanics' Insurance Company? A. No sir.

Q. Has the firm of L. R. Eby & Company ever represented the Milwaukee Mechanics' Insurance Company during your association? A. No sir.

Q. What is your business with L. R. Eby & Company? A. Manager Reno office.

Q. How long have you been manager of the Reno office? A. About eight years.

Q. Is Mr. Hassett a competitor of yours?

A. Yes sir.

Q. Among the lines of insurance that you handle through your office, is fire insurance one of those lines? A. Yes sir.

Q. And other lines as well, I take it?

A. Yes sir.

Q. Now do you remember in September of 1941 you made a visit to the Questa ranch in company with Mr. Howard Parish? A. Yes sir.

Q. Will you tell the court please what occasioned that visit?

A. Mr. Parish, one of our agents, asked us to cover some hay for one of his clients that was stored in the Questa barn. We [140] issued a cover note as of August 15th in order to immediately bind the risk. On September 9th Mr. Parish phoned and asked me if I wouldn't go out to the ranch with him to look over the hay.

Q. What date was that?

A. September 9th.

(Testimony of James B. Corica.)

Q. How do you fix that date?

A. I fix the date from the time that we issued our policy.

Q. When did you issue your policy?

A. We issued our policy on September 10th.

Q. And it was the day before that that you accompanied Mr. Parish to the Questa ranch?

A. Yes sir.

Q. Did you see Mr. Questa when you were there? A. Yes sir.

Q. Tell us what you did when you got there and what happened?

A. We drove into the ranch in Mr. Parish's car and Mr. Questa was working on a pump near one of the houses. We told Mr. Questa what we were there for and we walked over to the barn, walked around outside of the barn to see the hay that our client had and then entered the barn to check the baled hay that was stored in one section of the barn.

Q. Now there were, as I understand, two barns on the ranch and you have been speaking of one. I am going to show you Plaintiffs' Exhibit No. A-1 and ask you if that is the barn that you are speaking of? A. Yes, that is the barn.

Q. Now you were there to examine some hay that was stored in that barn that belonged to a Mrs. Cupit, is that right? [141] A. Yes sir.

Q. Did Mr. Questa assist you in locating this hay and inspecting it?

A. Mr. Questa took us into the barn and showed

(Testimony of James B. Corica.)

us Mrs. Lindley's hay. It was all baled hay, and he told us the approximate number of tons that were in the barn.

Q. You said Mrs. Lindley, that is the same woman later known as Mrs. Cupit, is that correct?

A. Yes sir.

Q. Did any conversation take place at that time with regard to insurance of Mr. Questa on Mr. Questa's property?

A. The three of us, as we left the barn, were talking about insurance. Mr. Parish asked Mr. Questa if he had insurance on the barn. Mr. Questa said that he did not have it insured. He asked us what the rate would be. We gave him an approximate rate of \$1.85 a hundred for one year. Mr. Parish asked him if he wouldn't let him insure it. Mr. Questa said he didn't want to insure it, that Mr. Hassett took care of all his insurance business. Later we talked about hay insurance and asked if he carried insurance on his hay. He stated that he did not, due to the fact that the hay was in various piles over the entire ranch and if he had a loss on hay, it would only damage one stack.

Q. Do you recall whether he said he had had any conversation with Mr. Hassett concerning figures for insurance on the barn? A. No.

Q. You mean you do not recall?

A. I do not recall his mentioning anything about asking Mr. Hassett for rates on the barn. His reply was that Mr. Hassett [142] took care of all his insurance.

(Testimony of James B. Corica.)

Q. Now you recall, Mr. Corica, that on the 26th of January I came to see you at your office?

A. Yes.

Q. And at that time you gave me a resume of that transaction? A. Yes sir.

Q. And it was taken down in shorthand, do you remember that? A. Yes sir.

Q. I am going to read you one of your answers from that statement and ask you if that refreshes your recollection regarding whether you and Mr. Questa had a conversation regarding figures on the barn.

Mr. Boyle: Objected to as incompetent, irrelevant and immaterial; it is hearsay, not proper examination.

The Court: As I understand, it is conversation.

Mr. Boyle: But Mr. Questa is not a party to it. He can not testify to something that is hearsay. That is hearsay as far as the court and we are concerned.

Mr. Levit: If the statement I read the witness does not refresh his recollection, that ends it. If the witness recalls and that refreshes his recollection, I think it is proper.

The Court: I will permit it, subject to the objection.

Q. One of your answers, Mr. Corica, I asked you:

“Do you recall that he mentioned he received some letters from Mr. Hassett?”

(Testimony of James B. Corica.)

“A. Do you want positive answer?”

“Q. No, just to your best recollection.

“A. My best recollection is that he mentioned [143] that Mr. Hassett handled his insurance and Mr. Hassett was going to supply him with some figures.”

Now does that refresh your recollection as to whether there was any conversation between you and Mr. Questa and Mr. Parish regarding the fact that Mr. Questa said or did not say that Mr. Hassett was going to furnish him with some figures?

A. Mr. Questa stated Mr. Hassett was handling all of his business.

Q. That is all that you recall? A. Yes.

Q. Now, Mr. Corica, will you describe, please, the barn as you observed it and its condition?

A. The barn was quite a large barn, very old. The interior was full of cobwebs, hanging down from the roof and all over the place. We commented on the cobwebs. Had a fire occurred—this was a conversation between Mr. Parish and myself.

Mr. Boyle: Objected to as hearsay.

Q. Was Mr. Questa there at the time?

A. Mr. Questa was behind us. I don't think he overheard the conversation.

Q. Don't relate the conversation, just tell us what you observed. A. We observed—

Q. What you observed.

A. I observed the barn was full of cobwebs, that the north end of the barn, where there may have

(Testimony of James B. Corica.)

been a loft, the floor of the loft was full of holes. I would say that the barn was in fair condition, not at all good. [144]

Q. What was the condition of the roof from the outside, if you observed it?

A. I would say the roof was in fair condition.

Q. What about the paint?

A. I don't think that the barn had been painted for probably several years.

Q. You stated when this insurance on the Lindley or Cupit hay was first given to you in August by Mr. Parish, you issued a binder to cover the hay?

A. Yes sir.

Q. Was that in accordance with the usual custom when a risk is firmly bound? A. Yes sir.

Q. And when I say "in accordance with the usual custom" I mean not only of your office, but of the fire insurance business in Reno.

A. That is the usual custom. I can state that this is the usual custom of all companies, that any time we get an order for a risk on which we can not immediately issue a policy, usually we issue a cover note or binder to protect that risk from the time that we get the order from our agent.

Q. Is that the general custom of the business here? A. Yes sir.

Mr. Levit: That is all.

(Testimony of James B. Corica.)

Cross-Examination

By Mr. Boyle:

Q. Mr. Corica, what is the date that you went to the barn? A. September 9th.

Q. What was your purpose of going to the barn? [145]

A. We went to the barn to check the hay that was stored in the barn for our assured.

Q. You say for "our assured", then if you say "for our assured" you mean there was insurance on the hay? A. Yes sir.

Q. When was the insurance placed upon the hay? A. August 15th.

Q. How do you account for the insurance being on the hay on August 15th?

A. Mr. Parish phoned my office, told me to cover the hay; he didn't know exactly the amount of hay there was on the ranch, and I executed the cover note, delivered it to Mr. Parish.

Q. Do you remember what date you went to the ranch with Mr. Parish? A. September 9th.

Q. Did Mr. Parish have any insurance on this hay? A. Yes sir.

Q. What date?

A. The insurance was placed as of August 15th.

Q. Now do you know anything about the transaction of the hay by Mr. Questa as to the purchase and the reason for the insurance?

A. The reason for the insurance was to protect Mr. Parish's client. I do not know anything about

(Testimony of James B. Corica.)

the transaction, insofar as the purchase of the hay or storage of the hay or anything else.

Q. You don't know anything about the transaction pertaining to the purchase of the hay. All you know was she purchased——

A. All I knew it was her hay that was in the barn.

Q. It was her hay that was in the barn. Now do you know how [146] long she owned the hay?

A. No, I do not.

Q. Do you know anything about the purchase of the hay? A. No, I do not.

Q. What conversation did you have at any time with Mr. Questa during your visit to the ranch, pertaining to the hay?

A. My direct conversation with Mr. Questa?

Q. Yes, did you have any?

A. I did not have any conversation direct with Mr. Questa.

Q. Who was talking to Mr. Questa then, if anybody, if you recollect, in your presence?

A. Mr. Parish.

Q. What was said about the hay, if you recollect?

A. Mr. Questa gave us the approximate amount of tonnage that was in the barn.

Q. Do you remember now with relation to the approximate number of tons, how many tons of hay were in the barn belonging to Mrs. Cupit?

A. I think there were about eighty tons.

(Testimony of James B. Corica.)

Q. Eighty tons in the barn. Was there any other tonnage elsewhere that you know of?

A. There was some other hay alongside the barn.

Q. Was it cut and baled?

A. It was baled hay.

Q. And was that pointed out to you as being Mrs. Cupit's hay? A. Part of it was, yes.

Q. And the part that was pointed out to you, was that insured by you? [147]

A. That wasn't insured, no.

Q. Then when was the hay insured, if it were ever insured, outside of the barn?

A. I think our cover note was issued to cover the hay on the ranch and in the barn. The reason that we didn't insure the hay that was outside the barn was that it was being moved to her ranch and when we issued the policy that part of the hay, as I understand it, had already been moved and the only hay that we issued our policy on was the hay in the barn.

Q. Do you remember any instructions given to Mrs. Cupit about having the hay insured? Did you hear any one give her any instructions?

A. I never heard any one talk to Mrs. Cupit about the hay.

Q. Do you know Mrs. Cupit?

A. I know her by sight, yes.

Q. You didn't have any business with her outside this transaction?

(Testimony of James B. Corica.)

A. We have other business with her, yes, have other insurance business with her.

Q. In relation to the transaction of this particular hay, you said you had given a cover note of a certain date, which is dated here, which is marked "9-9-41." When was that put on there, this "9-9-41"?

A. Mr. Parish put that on there.

Q. Is this the original?

A. That is the original.

Q. Where is the copy?

A. There are two copies, one copy went to our San Francisco [148] office as evidence of coverage; the third copy is in our office.

Q. Would it have that red mark on it?

A. No sir.

Q. Who put that red mark on there?

A. I would say Mr. Parish put that red mark on there.

Mr. Boyle: That is all.

Re-Direct Examination

By Mr. Levit:

Q. Mr. Corica, do you happen to have your daily report on that policy with you?

A. Yes, I do.

Q. May I see it please? Does this daily report of the policy that you speak about, insuring this Cupit hay, show the date on which the policy was made out?

A. Yes, sir.

Q. What date does it show?

(Testimony of James B. Corica.)

A. September 10, '41.

Q. And that is the date, I take it, that enables you to fix the date of your visit to the ranch?

A. Yes sir.

Q. Is the day before that?

A. Yes.

Re-Cross Examination

By Mr. Boyle:

Q. However, it does not fix the date of the purchase of the hay, does it?

A. No sir.

MR. HOWARD PARISH,

a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination

By Mr. Levit: [149]

Q. Mr. Parish, your full name is Howard Parish?

A. That is right.

Q. And you live in Reno?

A. That is right.

Q. Where do you live?

A. 577 St. Lawrence Avenue.

Q. How long have you lived in Reno?

A. Thirty years.

Q. What is your business?

A. Real estate and insurance.

Q. How long have you been in that business?

A. Twelve years.

(Testimony of Howard Parish.)

Q. Where is your office?

A. 156 North Virginia Street.

Q. What is the nature of the insurance business which you conduct?

A. Fire, auto, surety business.

Q. In what capacity?

A. I am a sub-agent.

Q. A local agent, in other words?

A. A local agent.

Q. For certain specified insurance companies?

A. Correct.

Q. What companies?

A. Occidental Fire Insurance Company; Pacific National Fire Insurance Company; Firemen's Fund Insurance Company, Northwestern Fire and Marine; Western Assurance Company.

Mr. Boyle: We stipulate he has a lot of insurance companies. [150]

Q. Are you agent, or have you ever been agent for the Milwaukee Mechanics' Insurance Company?

A. No sir.

Q. Do you know Frank Hassett?

A. Yes sir.

Q. Is he a competitor of yours in the insurance business?

A. Yes sir.

Q. Now do you recall an occasion in 1941 when you made a visit to the Silvo Questa ranch with Mr.

A. I do.

(Testimony of Howard Parish.)

Q. Can you tell us please when that visit took place?

A. September 9, 1941.

Q. How do you fix that date, Mr. Parish?

A. Well, I have a record that fixed it very definitely in my mind.

Q. Is this the record that you speak about?

A. Yes.

Q. Will you tell the court what that is?

A. That is known as a cover note or binder note, issued by an insurance company to evidence record of insurance until the policy is issued.

Q. Now was this cover note issued through your office?

A. It was issued at my request through the office of L. R. Eby & Company.

Q. When was it issued?

A. August 27th.

Q. That is the date that appears on the cover note, is it?

A. That is correct. [151]

Q. What is the effective date of the insurance?

A. August 15th.

Q. August 15, 1941?

A. That is right.

Q. You will notice on that cover note there is a red pencil notation, reading, "Ordered 9-9-41, Parish and Corica", will you tell us whether that is in your handwriting?

A. Yes sir, it is.

(Testimony of Howard Parish.)

Q. Will you explain to us when that notation was made and what the purpose is?

A. The binder note was held in my office for the period from August 27th until September 9, 1941, for the reason that I had delayed visiting the risk on behalf of my assured and on this date I called Mr. Corica and asked him if he had time to go with me to the Questa ranch to ascertain the amount of hay and the value thereof and the place of storage.

Q. When did you make that notation, after you came back?

A. After I returned.

Q. On the same day?

A. Exactly.

Q. That is on September 9, 1941?

A. Exactly.

Q. You stated from August 27th to September 9th you had not been able to go out to inspect the property?

A. Exactly.

Q. Why was that?

A. Well, for two or three reasons. I suppose the one I put up there, I knew Mrs. Cupit was in the practice of moving some of [152] the hay from the Questa ranch to her own property.

Q. But in the interim you had procured and held in your possession a cover note, evidencing the insurance, is that correct?

A. That is right.

Q. And that is this cover note, 09410, just referred to?

(Testimony of Howard Parish.)

A. That is right.

Q. Was the issuance of that cover note or binder at the time the insurance was definitely ordered or bound in accordance with the usual custom of your business affairs?

A. Yes sir.

Q. And is that also in accordance with the usual fire insurance business in the City of Reno?

A. Yes sir, I always request a binder for the record.

Q. I say in addition to your doing that, is it also in accordance with the custom of the fire insurance business in this city?

A. Exactly.

Mr. Levit: Now if counsel is willing, and in order that I do not take Mr. Parish's original records, I have a photostat of that cover note which I should like to offer in evidence instead of the original.

Mr. Boyle: We have no objection to the instrument itself. It may be put in if the Court sees fit, but we still have objection to the whole procedure, which we will bring out. However, for the record, I can object and can be overruled. I make objection, your Honor; I do not think it is the best evidence.

Mr. Levit: The original is the best evidence and we will—— [153]

Mr. Boyle: In lieu of the best evidence, you may offer it subject to my objection. I am not convinced it is a copy.

(Testimony of Howard Parish.)

The Court: Is it a photostatic copy?

Mr. Levit: Yes, sir. The original is here and counsel is within his rights in insisting that the original go in rather than the copy.

Mr. Boyle: You may offer the original and then I have no objection to substituting a copy.

Mr. Levit: We will do it that way. We ask the original cover note 09410 be marked as defendant's exhibit next in order.

The Court: It may be admitted. The legal effect, if any, we will consider later.

Clerk: Defendant's 5.

DEFENDANT'S EXHIBIT No. 5

Covering Note
No. 09410

L. R. Eby & Co.
General Agents

201 Sansome St., San Francisco, Calif.

For Assured

\$.....Western Assurance Co.	\$.....
\$.....Halifax Fire Ins. Co.	\$.....
\$.....Twin City Fire Ins. Co.	\$.....
\$.....Empire State Underwriters Dept.	\$.....
\$1000.00 Occidental Ins. Co	\$.....
\$.....	\$.....

Insurance against loss or damage by fire is hereby kept covered in the above named Company and for the amount given above, subject to the printed con-

(Testimony of Howard Parish.)

ditions of the Standard Fire Insurance Policy of the State, Territory or Province in which the risk hereby insured is located, or, (if there be no Standard Form of Fire Insurance Policy prescribed by the law of such State, Territory or Province) the printed conditions of the present Standard Fire Insurance Policy of the State of New York, shall be deemed to be a part of this cover note, except as hereinafter provided, as follows:

In favor of Monaei Lindley

Loss, if any, payable to Assured

On Hay in Barn on Silvio Questa Ranch

Situate About 4 Miles East of Reno, Washoe
County, Nevada

From Aug. 15, 1941, at Noon

To cease October 1, 1941 at noon

Or such time prior thereto as the Company's policy
may be issued on above described risk in lieu
hereof.

Insurance Map

Dated 8-27-41

Sheet.....

Agency Howard Parish

Block.....

No.....

By J. CORICA

[Red Pencil Notation]: Ordered 9-9-41 Parish—
Corica.

[Endorsed]: Filed June 24, 1942.

(Testimony of Howard Parish.)

The Court: You may substitute the photostatic copy.

Mr. Levit: We now ask leave of the court to withdraw the original and substitute the photostatic copy.

Mr. Boyle: No objection.

The Court: It may be admitted.

Q. Now, Mr. Parish, when you went to the Questa ranch on September 9, 1941, did you see Mr. Questa?

A. Yes sir.

Q. Did you have a conversation with him in the presence of Mr. Carico?

A. Yes sir.

Q. Will you tell us please, describe your visit to the ranch and what was said between the three of you.

A. We drove up to the ranch in the early afternoon of September 9, 1941, observed Mr. Questa near one of the buildings, tinkering [154] with some pump or something around the property, and I got out of the car, walked over toward him, told him that I had come down to look at the hay that belonged to Mrs. Cupit for insurance purposes and would he please show it to me. There was other inconsequential conversation about the weather, something like that, prior to that. He got in the car, or on the car, and first directed us down a lane to the east of the property and showed us a pile of hay piled by the lane, then brought us back to the barn

(Testimony of Howard Parish.)

and I parked my car more or less near the front of the barn. We walked thru some big doors into the barn.

Q. Before you go any further, so there will be no question as to what barn you are referring to, I am going to show you plaintiffs' Exhibit A-1 and ask you if that is the barn you are talking about?

A. That is the south exposure of the barn.

Q. All right, continue then please.

A. We walked into the barn in company with Mr. Questa and Mr. Corica. He pointed to the left and said, "That pile of hay belongs to Monaei."

Q. Monaei is the first name of the lady called Lindley and Cupit?

A. That is right. He said, "About 70 tons" and that fixed the place of the hay and amount of insurance we had to place on that, and that was all there was to that. As we walked out of the barn, I asked him if he had insurance on the barn and he replied no. We approached the car and he said, "What would the rates be?" I said, "Oh, I don't know. Jim, what are the rates?" Mr. Corica had his manual with him, but I don't think he even referred to it. He stated that it would be approximately two [155] dollars. We approached the car by this time and I remarked that he should have some insurance on the building, that I would like to write it. He says, "Well, Frank has it, has all my insurance" and that stopped me and I carried on no further conversation.

(Testimony of Howard Parish.)

Q. And then I take it that you left and the next day the policy of insurance was issued, taking up that cover note that you spoke about?

A. Exactly.

Q. Now will you describe, please, the condition of the barn as you observed it?

A. Well, the barn was an old barn. I have known it for some time. It is badly in need of paint. The interior of the barn was in pretty bad shape, trash piled around here and there and loose hay on the floor, cobwebs hanging down from the joists, covered with dust, highly combustible, and sort of loose or careless wiring throughout the barn.

Mr. Boyle: Objected to. No foundation laid for any extra testimony with relation to wires or anything pertaining to it. It is purely conclusion on the part of the witness. I move it be stricken.

The Court: I think that will go to the weight rather than otherwise for the present.

Q. Just describe what you saw.

A. That is what I saw.

Q. What else? Did you observe the condition of the floor of the hayloft?

A. Not particularly. I glanced up naturally, but I do not re- [156] call anything unusual about it. It was old.

Q. Did you observe the condition of the roof?

A. Yes, my recollection of that was that it needed painting and the shingles were curled in various places.

(Testimony of Howard Parish.)

Mr. Levit: That is all.

Cross-Examination

By Mr. Boyle:

Q. Mr. Parish, how long have you been handling the insurance business of Mrs. Cupit?

A. Since '35.

Q. Do you remember this particular transaction, in which Mrs. Cupit purchased the hay?

A. Yes.

Q. Do you remember when she first notified you on the matter of hay?

Mr. Levit: Will you pardon me. I overlooked a portion of testimony I intended to ask and counsel might want to cross-examine on it.

Mr. Boyle: Go ahead.

By Mr. Levit:

Q. Mr. Parish, do you recall you had a subsequent meeting with Mr. Questa in Reno after September 9th and before the fire that burned this barn?

A. Yes, I recall meeting Silvo, or Mr. Questa.

Q. Where did you meet him?

A. Well, that I wouldn't be positive about. Mr. Questa drops into my office occasionally for notary work. It might have been there or might have been on the street.

Q. And do you recall any conversation with him at that time [157] about insurance on the barn?

A. Yes, I questioned him. I said, "Did you ever write the insurance on the barn?"

(Testimony of Howard Parish.)

Q. What was his answer?

A. No.

Q. You mean his answer was no?

A. No.

Q. Mr. Parish, can you fix the date of that conversation?

A. No.

Q. Well, within limits? Do you know whether it was before or after September 9th?

A. It was before September 9th.

Q. Before you had been out to the ranch?

A. Pardon me. It was after September 9th, that's right.

Q. Now do you recall when this barn burned?

A. Late in September. I don't recall the exact date.

Q. But you do recall the occasion?

A. Well, I certainly do, yes.

Q. And do you recall whether this conversation that you spoke about was before the barn burned?

A. Oh yes.

Q. So that it was between September 9th and September 20th, which was the date of the fire?

A. Yes sir. That is right.

Cross-Examination

By Mr. Boyle:

Q. Now with reference to the hay. Do you remember when Mrs. Monaei Lindsay came to you with reference to insuring the hay?

A. She didn't come in to see me. [158]

(Testimony of Howard Parish.)

Q. She phoned you?

A. Phoned me.

Q. What date did she phone you?

A. On the 15th of August.

Q. Do you remember at that time whom she had purchased the hay from?

A. She stated she had purchased some hay at the Questa ranch and would I insure it.

Q. Did she state the date she purchased the hay?

A. No sir.

Q. You don't know anything about the date she purchased the hay?

A. No sir.

Q. And you don't remember the fact that a visit was made to Mr. Questa's ranch by you and Mr. Carico in July of 1941?

A. No such visit was made.

Q. Wasn't it a matter of fact that a visit was made and hay was purchased at that time by Mrs. Cupit from Mr. Carico at that time and you went out to insure the hay?

A. You are confused as to names in the first place. She didn't purchase any hay from Carico.

Q. I said you and Mr. Carico went to the ranch when the hay was purchased out there?

A. No.

Q. As a matter of fact, didn't you go and ask Mr. Questa what the price of that hay was?

A. No sir.

Q. You didn't go to the ranch during July at all?

(Testimony of Howard Parish.)

A. No sir. [159]

Q. During the month of July wasn't it a fact that Mrs. Monaei Lindsay Cupit had purchased hay from Mr. Questa and entered into a contract in writing pertaining to it? A. I don't know?

Q. Wasn't it a matter of fact that at that time she was told to have insurance put on the hay because it was to be put in the barn and insisted by Mr. Questa that the barn ought to be insured also?

A. I wouldn't know about that.

Q. Did you ever, during the month of July, 1941, in conversation with Mr. Questa at the ranch, ask him the price of the hay?

A. I don't recall that at all.

Q. Did you not at that time in 1941, when you were asking the price of hay, state there was not enough insurance on the hay and that more insurance should be put on it?

A. I don't recall discussing values with Mr. Questa at all on any hay.

Q. You have had considerable business with Mrs. Cupit, have you not, in the insurance line?

A. That is right.

Q. Is it not customary for her to attend to matters of insurance at once?

A. It is a custom.

Q. You are familiar with Mrs. Cupit's signature, are you not? A. Yes.

Q. You are familiar with that particular signature? A. That is right.

(Testimony of Howard Parish.)

Mr. Boyle: We offer this particular document for iden- [160] tification and ask it be marked for identification.

Clerk: Plaintiffs' H for identification.

Mr. Boyle: No further examination.

Redirect Examination

By Mr. Levit:

Q. Mr. Parish, defendant's exhibit—

Mr. Boyle: It is not an exhibit, only for identification.

Mr. Levit: Oh yes it is. It is Exhibit No. 5.

Q. —shows date August 27, 1941—

Mr. Boyle: I beg your pardon.

Q. —is that correct? A. Right.

Q. Is that the date on which this cover note, requested by you of Eby & Company, was issued by them?

A. That is the date it was requested, but I asked coverage be placed as of August 15th.

Q. But the cover note was actually requested by you on August 27, 1941?

A. That is correct.

Q. What date was it, if you remember, when Mrs. Cupit requested you to insure this?

A. August 15th.

Q. And you got cover note on August 27th?

A. That is right.

Q. And dated it back to August 15th?

A. Exactly.

Q. Did you go out to the Questa ranch prior to

(Testimony of Howard Parish.)

August 27th, the date on which this cover note was issued? [161] A. No.

Q. At any time? A. No.

Q. That was the first time you had ever been there?

A. Wait a minute. In past years I have been there, but not during any period immediately prior to the issuance of this cover note and regarding this transaction.

Q. Well, let me ask you this—do you remember how long it was before August 27, 1941 that you had been out to the Questa ranch?

A. Oh, I don't recall; it was several months.

Q. When you say several months, would it be in 1941 do you think? A. I don't think so.

Q. You think before 1941? A. Yes sir.

Q. Did you on that occasion go out there to discuss any insurance relative to Mrs. Cupit or Mrs. Lindley? A. No sir.

Mr. Levit: That is all.

Mr. Boyle: That is all.

The Court: We will take our usual 10-minute recess at this time.

(Recess taken at 11:08)

11:16 A. M.

The Court: Proceed.

MR. JOHN F. HICKOK,

a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination

By Mr. Levit:

Q. State your full name? [162]

A. John F. Hickok.

Q. Where do you live? A. Reno.

Q. How long have you lived in Reno?

A. Between four and five years.

Q. Where did you live before that?

A. In California, southern California.

Q. For how long? A. Around five years.

Q. And before that?

A. Tulsa, Oklahoma.

Q. How long did you live in Tulsa?

A. About eight years.

Q. What is your business, Mr. Hickok?

A. I am a real estate salesman and broker.

Q. How long have you been in the real estate business? A. About 15 years.

Q. And in what places?

A. Here, in California, and Oklahoma.

Q. Now are you familiar with the types and classes of buildings in Reno and its vicinity?

A. Yes.

Q. And with the sales and purchase and the prices of property in this vicinity? A. Yes.

(Testimony of John F. Hickok.)

Q. Does that include both farm and city property? A. Yes.

Q. And you sell both types? [163]

A. Yes.

Q. Are you familiar with the basis on which loans are made in Reno and the vicinity of Reno?

A. Yes.

Q. Now have you done any appraisal work, Mr. Hickok, of real estate? A. Yes, I have.

Q. Here in Reno and around Reno?

A. I have done some here.

Q. What about elsewhere?

A. I did a great deal in Oklahoma, in Kansas, and parts of Texas.

Q. And are you familiar with barn buildings and farm buildings generally? A. Yes sir.

Q. The types of buildings that are used for barns here and around this vicinity?

A. Yes.

Q. Now during the time you were in the real estate business in Tulsa, did you do some appraisal work?

A. Yes, I appraised for the American National Insurance Company of Galveston, I appraised for their loans. I appraised properties that they loaned money on through Kansas, Oklahoma, and parts of Texas.

Q. Did that include both rural and city property? A. Yes.

Q. Now are you familiar with the market values

(Testimony of John F. Hickok.)

of property in this vicinity and the rate at which it would normally depreciate? A. Yes. [164]

Q. You have been sitting in court yesterday and today during all the testimony that has been given in this case, have you not? A. Yes.

Q. And you have heard discussion about a barn on the Questa ranch. Now, having in mind that barn of Mr. Questa's, Mr. Hickok, as you have heard it described, having in mind its age of approximately 35 or 40 years, and having in mind the type of construction, and assuming that it was reasonably well kept up, what, in your opinion, would be the amount of depreciation on that barn as of September 20th or 21st, 1941, as compared with its reproduction cost, whatever that reproduction cost might be?

A. I would say a barn 35 to 40 years old would have depreciated possibly from 75 to 80 per cent, as compared to a new structure that was new September last year.

Mr. Levit: That is all.

Cross Examination

By Mr. Boyle:

Q. Mr. Hickok, do you hold yourself out as an expert on building construction?

A. I consider myself very well informed on building construction.

Q. Did you ever study architecture?

A. No.

Q. Did you ever study engineering?

(Testimony of John F. Hickok.)

A. No.

Q. Do you know anything about specific gravity of materials? A. No.

Q. Do you know anything about concrete?

A. Yes.

Q. All right. You heard the testimony in this court to the [165] effect that the floors were ripped up and that under each column was placed concrete and around the various piers or posts, as they call them. You heard the dimensions of the concrete in depth, and also in thickness. Now what effect would concrete have upon a post as to its underpinning?

A. Well, concrete is a perfect underpinning for posts, providing it is protected properly.

Q. Then if a person would undertake to tear the entire flooring out and undertake to put the concrete of the dimensions that were put under those posts in, it would have restored that building almost to its original status as to a substantial building, would it not?

A. No; it would keep the building from falling down, which possibly would have happened had that not been done.

Q. Now in relation to the falling down part—you know what 10 x 10 piece of lumber is, do you not? A. Yes.

Q. It can become very dry, can it not?

A. Yes.

Q. And at the same time it can be very strong?

A. Yes.

(Testimony of John F. Hickok.)

Q. If it is 10 x 10, it is just as good as any 4 x 4 or 6 x 6 today, wouldn't it be?

Mr. Levit: I think the question is unintelligible.

Mr. Boyle: We are talking about the particular posts in that building. You examined him about present building and that is what I am examining him about.

Mr. Levit: There is no testimony as to the condition [166] of the posts.

Mr. Boyle: You said the condition of the barn. You can't take one part and leave out the rest. You are talking about the entire building and I am talking about the condition of its parts that go to make up the structure and then I can go to the rest of it and show the barn is in perfect condition.

The Court: We can argue those matters later.

Mr. Levit: I will withdraw my objection.

The Court: Proceed.

Q. You did not see the braces in the building; in fact, you did not see any part of it?

A. That is right.

Q. But you heard testimony here by Mr. Williams? A. Yes.

Q. If Mr. Williams had been in the building construction business for thirty years, you would presume he knew more about the business than you did, would you not?

Mr. Levit: Objected to as calling for conclusion of the witness, not proper.

Mr. Boyle: If the man knows, your Honor. No-

(Testimony of John F. Hickok.)

body would know better than himself. It certainly wouldn't be conclusion.

The Court: I will permit the question.

(Question read.)

A. Not necessarily. I have seen many very fine old carpenters who are very far off in their estimates of cost of construction. That is what we run into in the loan business and we run into that frequently. A carpenter is a very good mechanic but not a [167] good estimator.

Q. How about a contractor, wouldn't a contractor be a good estimator?

Mr. Levit: Same objection.

The Court: Same ruling for the present.

A. Some contractors are good estimators and some aren't.

Q. You did not see this building at all?

A. No.

Q. The fact is, according to your testimony, when you said a building would depreciate 75 to 80 per cent, did you take into consideration that the building had been underpinned with a foundation under all the columns and on the outside?

Mr. Levit: Their own contractor testified, your Honor, it wasn't that kind of job.

The Court: I will permit the question. Read the question.

(Question read.)

A. That would possibly cut down the amount of

(Testimony of John F. Hickok.)

depreciation to some extent; it undoubtedly would, but it would not make it the same as a new building. We have that in many cases right here in Reno in the older homes that are 40 to 50 years old. The original foundation was made out of lime and sandstone and in order to keep them from absolutely tipping over, a new foundation has to be put under the building. However, it is still an obsolete building and will not bring on the market 60 per cent, 40 per cent, sometimes not 25 per cent of the original cost of construction, even with a new foundation.

Q. Referring to a barn, how does a barn become obsolete? [168]

A. All buildings become obsolete.

Q. Obsolete means no longer in use, not efficient. That being the case, how does a barn that stores hay and onions and other materials to keep them from the weather become obsolete?

Mr. Levit: We object. That is founded upon a definition assumed by counsel and the definition is worked into the question as a statement of fact, and I think the question therefore is improper cross-examination.

Mr. Boyle: We could eliminate my description of obsolete, which by the way is correct.

Mr. Levit: I do not think it is.

The Court: I think the question should be modified.

Mr. Boyle: We will strike it.

(Testimony of John F. Hickok.)

Q. How does a barn become obsolete when it fulfills all requirements of storing hay, storing onions, and housing cattle and horses if necessary?

Mr. Levit: That assumes facts not in evidence. As a matter of fact, at the time of the fire it was not in shape for storing cattle, horses, or hay, because there were no pillars in the hayloft for the hay, except on the ground floor, and I think the question is improper.

Mr. Boyle: I asked about the barn in general, testing his credibility as an expert as to whether or not——

The Court: Probably the question goes to the weight.

A. The only way I can answer that question is by this comparison. If there are two pieces of ground, say, of 80 acres each, where the soil is similar, or we will say exactly the same if they adjoin each other; one 80 acres has improvements that were built [169] in 1941, the other 80 acres has improvements that were built in 1900. If a purchaser is taken out and shown both properties adjoining each other and there is no question of soil, you could add at least 70 per cent of the cost of the new structures to the value of the 80 acres that has the new improvements on it, because the old improvements, that were 40 years old, would be considered out of date and not of much actual physical value. While that might keep the rain off from you, you might be able to sleep in that,

(Testimony of John F. Hickok.)

you might be able to put hay in that, but that would not have a true value of the amount of the new structure.

Q. Is it customary, in your experience, such as you have testified to, in appraising various buildings and also dealing in real estate, for a farmer, who has an old barn, to tear it down and put up a new barn when it meets all his requirements?

Mr. Levis: Objected to as not proper cross-examination.

The Court: I will permit the question. It goes to the weight.

A. I have seen that done in some cases but it is not the usual procedure.

Mr. Boyle: That is all.

Mr. Levit: That is all. Counsel, will you stipulate that the work on these concrete pillars was done in the year 1938 or 1939 and the cost in all was not more than \$500.00?

Mr. Boyle: With the labor of his crew.

Mr. Levit: With the labor and everything. I would like to recall Mr. Questa for one point.

MR. QUESTA,

having been previously sworn, testified as follows:

[170]

Recross Examination

By Mr. Levit:

Q. Mr. Questa, these cement pillars you put in

(Testimony of Silvo Questa.)

under the posts in the barn were put in in the year 1939, weren't they? A. I believe so.

Q. And the total cost, including material and labor, was around four or five hundred, was it not?

A. No.

Q. How much was it?

A. There was a contract and the cement and rock and sand. We hauled the rock. That was for the cement and not the labor.

Q. That does not cover the labor? A. No.

Q. Now you remember in January, when you gave me that statement in Mr. Boyle's office, I asked you these questions and you gave these answers:

“Q. Did you do any work on the barn?

“A. I would say.

“Q. What did you do on it?

“A. I put in all them cement pillars under it, had it all straightened.

“Q. Did you do the work yourself or have it contracted?

“A. I had it contracted.

“Q. Who did the work?

“A. One of the boys is dead and there is still one living.

“Q. What were their names?

“A. Joe Barbagola. [171]

“Q. When was that work done?

“A. Done in the summer of '38 or '39.

“Q. How much did you spend on it at that time?

(Testimony of Silvo Questa.)

“A. I couldn't remember really.

“Q. Well can you give me an approximation?

“A. Around four or five hundred, between four and five hundred.

“Q. That is in all, including the material?

“A. Well, that is the labor, not counting my men as labor. I can remember I paid them so much a day, five dollars a day, I think, five or six dollars a day, yes six dollars a day, they board themselves, and I bought sand and gravel and had my men haul the rocks.

“Q. Did this figure of four or five hundred include that?

“A. Yes, that will about catch it.

“Q. That will about cover the whole thing. Did you do any other work on it?”

And then you went on and told what other work you did. Do you recall so testifying?

A. Yes.

Mr. Levit: That is all. Defendant rests.

Rebuttal Testimony

MRS. QUESTA,

having been previously sworn, testified as follows:

By Mr. Boyle:

Q. Mrs. Questa, did any note or binder come to you down on the [172] ranch?

(Testimony of Mrs. Jennie Questa.)

Q. Was any policy delivered to you by Mr. Yori?

A. There was a policy delivered in August by Mark Yori, Jr.

Q. August, 1941?

A. Well, it was right after the house was constructed, just finished.

Q. And that was in August or July?

A. The house was finished in July, the 4th, and he come in August.

Q. Were the policies delivered to you or did they come by mail?

A. He delivered them to me, Mark Yori, Jr.

Q. Did Mr. Hassett come to the ranch in July at any time? A. No.

Q. If he testified that he came to the ranch, you didn't see him there at the ranch at any time?

A. I didn't see him.

Q. If he had come to the ranch, would you have seen him?

A. I was at the old house. He might have come to the new house. It seems to me he did come, but I didn't pay much attention. I was living at the other house.

Q. Do you recollect Mr. Howard Parish coming to your ranch? A. Yes.

Q. Did he come with Mr. Corica?

A. He had a man with him, yes.

Q. Do you remember the month he came to your ranch? A. In July.

(Testimony of Mrs. Jennie Questa.)

Q. July of 1941. How long after was it concerning the proposi- [173] tion of hay purchased by Mrs. Cupit?

A. Well, Mr. Questa said the hay was purchased—I can't say.

Q. It says here the hay was purchased on July 3, 1941.

Mr. Levit: It doesn't say that, as I recall it, Mr. Boyle.

A. The hay was purchased by Mrs. Cupit and Mr. Questa told me Mr. Parish was going to insure this hay, was coming down.

Q. Do you remember the month Mr. Corica and Mr. Howard Parish came to the ranch?

A. In July.

Q. Of 1941?

A. Yes, and I was living in the stone house. They drove right up to the house there.

Q. Did you have any conversation with them?

A. I asked them what they wanted. He says, "I want to insure Mrs. Lindley's hay. Where is Mr. Questa?" I said, "Around the ranch." He was very busy.

Q. Was he tinkering on any pipes when they came? A. No sir.

Q. Do you know where Mr. Questa was?

A. He was haying and I know he was busy with some of the men around and I said, "I will look around and see" and finally I saw him, so I went back in the house.

(Testimony of Mrs. Jennie Questa.)

Q. In July of 1941 was the barn or not filled with hay? A. It was filled with hay.

Q. Was it possible to see any cobwebs and things of the kind described here today?

A. There might have been a few, generally old buildings have [174] some, but not to amount to anything, because we were using that barn all the time, storing everything in there.

Q. Was there or not many cobwebs?

A. No, there wasn't many.

Q. Now with relation to the time that Mr. Parish said he came to the ranch, do you remember him coming with Mr. Corica any time in the month of July or any other time in July? A. No sir.

Q. If they had come, would you have seen them?

A. Yes.

Mr. Levit: Objected to; that calls for conclusion.

Q. Were you there all the time?

A. All the time. I never left that ranch.

Mr. Levit: Still objected to on the same ground.

(Question read.)

The Court: I think the objection goes to the weight.

Mr. Boyle: You may cross-examine.

Mr. Levit: No cross-examination.

MR. QUESTA,

having been previously sworn, testified as follows on rebuttal:

By Mr. Boyle:

Q. You heard the testimony in this court room pertaining to meeting you in Club 116 in Reno, Nevada, by Mr. Hassett, did you not? A. Yes.

Q. Did you ever meet Mr. Hassett in Club 116 in Reno, Nevada? A. Yes.

Q. What month was it that you met him in Club 116? [175]

A. I met him on January 26th, early in the evening. I walked in there with Mr. Rudy and Mr. Hassett and Mr. Levit were standing at the bar.

Q. Did you see him on July 27, 1941, in Club 116 at Reno, Nevada?

A. Not that I remember.

Q. If you had seen him you would have known it, would you not?

Mr. Levit: Objected to as leading.

The Court: I can't see it is leading.

Q. Well, would you have or not?

A. I would if I had saw him.

Q. Now in relation to telling Mr. Hassett about insurance for four thousand dollars in the presence of the young lady here by the name of Miss Porta—— A. Could I go on?

Q. I will withdraw the question. You may continue on.

A. We had a drink at 116 and Frank wanted to

(Testimony of Silvo Questa.)

go to Club Fortune and he wanted to buy a drink, so all three of us went.

Mr. Levit: To the Club Fortune, didn't we?

A. That is right.

Mr. Boyle: Don't ask any questions; let him testify.

A. And Mr. Levit left and that is when Frank Hassett told me to be patient for three days.

Mr. Levit: What date was that?

A. January 26th.

Mr. Levit: 1942?

A. Yes.

Q. (Mr. Boyle) Now, Mr. Questa, did you ask Mr. Parish and Mr. Corica about insurance rates at any time, pertaining to the barn, [176] yes or no.

A. No.

Q. Did you or did you not ask Mr. Corica or Mr. Parish, during the month of September, about insurance? A. No.

Q. Did Mr. Corica and Mr. Parish come to the ranch in Glendale during the month of September or August of 1941? A. No.

Q. Do you remember seeing Mr. Corica and Mr. Parish on the ranch at any time during 1941?

A. Yes.

Q. Do you remember the date, or thereabouts, that they came to the ranch? A. Yes.

Q. During what month? A. July.

Q. How do you fix the month of July as the month they were there?

(Testimony of Silvo Questa.)

A. I sold Mrs. Cupit all the hay that was in the barn. I also sold her a field of hay that was standing on the northeast corner of the ranch, and I sold her this hay and we wrote up a contract on July 3rd.

Q. I show you a certain instrument and ask you if that is the instrument which was written up?

A. Yes.

Q. Was that instrument signed by Mrs. Cupit?

A. Yes.

Q. Are you familiar with her signature?

A. Yes. [177]

Q. Did you or did you not sign a similar document? A. Yes.

Q. I show you also another document and ask you if you signed that? A. Yes.

Q. Did you give her a copy of it? A. Yes.

Mr. Levit: May I see it?

Mr. Boyle: We would like to offer this particular document in evidence, the one signed by Mr. Questa, and the other one for identification, and ask they both be made one exhibit.

Mr. Levit: No objection.

The Court: They may be admitted.

(Document signed by Monaci Lo Cupit and Silvo Questa marked Plaintiffs' "H" and document signed by Monaci Lo Cupit only marked Plaintiffs' "H" for identification.)

Mr. Boyle: I will read this particular document:

(Testimony of Silvo Questa.)

PLAINTIFFS' EXHIBIT H

“Reno, Nevada,

July 3, 1941

“Mr. Silvo Questa

Glendale, Nevada

This is confirm our verbal agreement whereby I agreed to purchase and you agreed to sell to me all of your last year's crop of hay amounting to sixty (60) tons more or less, which is now stored in your barn on your ranch near Glendale, and to pay you therefor the sum of Fifteen Dollars (\$15.00) per ton; delivery to be taken by me at your ranch.

“I also agree to purchase all of your this year's crop of hay still uncut from the pasture on the northeast corner of your ranch which it is now estimated will amount to approximately seventy (70) tons more or less, and to pay you therefor the sum of Fifteen Dollars (\$15.00) per ton; delivery to be taken by me [178] at your ranch. The hay, however, to be cut and baled by you at your expense, and such hay to be ready for delivery to me not later than August 10th, 1941.

“I further agree that payment for the above described hay shall be made by me to you as follows:

“\$500.00 upon your acceptance of this agreement;

(Testimony of Silvo Questa.)

“\$500.00 on or before the 3rd day of August, 1941;

“And the remainder of said purchase price on or before the 3rd day of October, 1941.

“Very truly yours,

“MONOEI LO CUPIT

“Glendale, Nevada,

July 3, 1941

“I hereby agree to sell the above described hay upon the terms and under the conditions above mentioned.

“SILVO QUESTA.”

(Printer's Note: Plaintiffs' Exhibit H for identification is same as above except that document was not signed by Silvo Questa.)

Q. Now is this the agreement that was entered into between you and her? A. Yes.

Q. And that was the agreement signed by you?

A. Yes.

Q. What money was paid to you and give the dates if you recollect.

A. Well, I can't recollect. She paid me some money at first.

Q. How much did she pay you?

A. \$500.00 it says there.

Q. Was that paid upon July 3rd?

A. Yes.

Q. And then did she pay you some more money?

A. Yes.

(Testimony of Silvo Questa.)

Q. When did she pay it?

A. Right along. [179]

Q. Was that in the month of August or before?
It says here, "\$500.00 on or before the 3rd of August."

A. Yes, she paid right when the dates came.

Q. Did you have any discussion on insurance pertaining to this particular hay at any time with Mrs. Cupit or her representatives?

Mr. Levit: Objected to as incompetent, irrelevant and immaterial.

Mr. Boyle: It all goes to testimony of the time.

Mr. Levit: I have no objection to dates.

A. Yes, after this agreement was drawn up, the next day, she sent her man to haul some hay by truck at Glendale, so I saw him and I told him, I said, "You tell your boss over there that she better carry insurance on this hay."

Q. How long after that, if you recollect, did anybody come to insure it?

A. Inside of three or four days Mr. Parish and that other young man came to the ranch.

Q. When did they start to haul hay?

A. The fourth of July.

Q. Then you fix it being three days after, you fix that about the 7th that Mr. Parish and Mr. Corica came to the ranch?

A. Yes.

Q. In relation to the barn and the hay therein during the month of July, how much hay was in the barn?

(Testimony of Silvo Questa.)

A. There was just a runway. There is a runway that you can drive, go in right through, and the hay on the left side was full from end to end, clean to the ceiling; you could look right up to the ceiling, and to the right, which would be the west, there [180] was hay on that side, but not all the way, just in one big pile there was hay to the west side, but not all the way. She was empty about three-fourths of the way, not quite three-fourths of the way, on the west side going north.

Q. During the month of September that Mr. Parish said he was there, before the 9th day of September, was there or not, according to his testimony, 70 ton of hay left in the barn?

A. They had been hauling hay since July.

Q. Just answer the question.

(Question.)

A. No.

Q. How much was there in the barn, if you recollect?

A. Well, on September 20th, when it burned down, there was about 10 ton of hay of Mrs. Cupit's left in the barn.

Q. What would you approximate about the number of tons about the 7th day of September, if you recollect?

A. Maybe about twenty ton.

Q. Now was there any hay outside belonging to Mrs. Cupit?

(Testimony of Silvo Questa.)

A. No, it wasn't cut yet, that field wasn't cut yet.

Q. Then the hay she owned outside was still in the field in September, 1941?

A. In September yes, the hay that was supposed to have went to Mrs. Cupit after she hauled this hay from the barn and the barn burned down, she didn't take any more hay because she said before she had too much hay, that she couldn't handle that field down there.

Q. Then she didn't take the contract?

A. No. [181]

Q. The hay was never cut, was it?

A. It was cut and I stored it up myself.

Q. Where did you store it?

A. I stored it outside while she got her hay out and then I had a man hauling hay in the barn three or four days before the barn burned, 900 bales of hay.

Q. During the month of September did you call Mr. Parish's attention to any hay belonging to Mrs. Cupit? A. What month?

Q. I am talking about September, before the 9th of September, did you have any discussion with him about hay outside the barn?

A. No.

Q. During the month of July, 1941, did you have any discussion with him about hay outside the barn?

A. No, not outside the barn.

(Testimony of Silvo Questa.)

Q. Then the only discussion you had was about hay inside the barn? A. That is right.

Q. Did you have any conversation with Mr. Parish? A. Yes.

Q. About what date and who was present?

A. About the 7th of July I guess.

Q. Who else was present, if any one?

A. Parish and that young fellow, Corica.

Q. And that was where? A. In the barn.

Q. Go ahead.

A. They asked me what I was getting for this hay. I said, "I [182] am getting \$15.00. Mr. Parish said to Mr. Corica, "I told you that you didn't insure it for enough."

Q. Was there any further conversation?

A. That is all.

Q. Have you anything else you want to say?

A. No.

Mr. Boyle: That is all.

Mr. Levit: That is all.

Mr. Boyle: We rest.

Sur-Rebuttal

MR. PARISH,

having been previously sworn, testified as follows:

By Mr. Levit:

Q. Mr. Parish, you heard the testimony of Mrs. Questa that when you came to the ranch you talked

(Testimony of Howard Parish.)

to her. Did you on this occasion of your visit to the ranch, in relation to the Cupit hay insurance, see Mrs. Questa or talk to her? A. No sir.

Q. When you drove to the end of the ranch, did you drive up to the house?

A. Toward a building I think they were using that as a dwelling, on the left hand side of the car, would be east, of a large building that I noticed there.

Q. How did you locate Mr. Questa?

A. I saw him out in the yard with gum boots on.

Q. Did you talk to anyone else before you saw Mr. Questa? A. No sir.

Q. You observed Mrs. Questa in the courtroom today, did you not? A. Yes sir. [183]

Q. Have you ever seen her before?

A. Not that I recall.

Q. Now you heard the testimony of Mr. Questa, as to the date on which this visit of yours took place. Do you wish to make any change in your testimony as to the date on which this visit to the ranch took place? A. No sir.

Mr. Boyle: We object as not being sur-rebuttal. Sur-rebuttal must be denial and that is purely argumentative.

Q. After hearing the testimony of Mr. Questa, to the effect that your visit to the ranch took place early in July, if you were asked now the same question as you were asked—

(Testimony of Howard Parish.)

Mr. Boyle: Objected to, as not sur-rebuttal.

Mr. Levit: Do you want me to ask all the questions over again.

The Court: I will permit the question, subject to the objection.

Q. After hearing the testimony of Mr. Questa a moment ago as to the fact that the date on which you visited the ranch was July 7th, if you were now asked by me the same questions I asked you earlier this morning, as to the date on which you visited the Questa ranch and had the conversation about the Cupit hay, would your answers be the same? A. Yes sir.

Q. Are you certain of the date on which you were there? A. I am.

Mr. Boyle: Same objection.

The Court: Same ruling. [184]

Q. What was that date?

A. September 9, 1941.

Q. Were you there in July or August or on any other occasion, for the purpose of considering the insurance on the Cupit hay? A. No sir.

Q. Did you have any knowledge of any insurance on the Cupit hay prior to the 15th of August, 1941? A. No sir.

Mr. Boyle: That is not sur-rebuttal.

Mr. Levit: It is too.

The Court: I will permit the answer, subject to the objection.

A. No sir.

(Testimony of Howard Parish.)

Mr. Levit: That is all.

Mr. Boyle: That is all.

Mr. Levit: We rest, your Honor.

The Court: This case presents questions of law at least with which the Court has no had any other similar case to deal with. I would like to have the transcript of the testimony and the matter fully submitted on briefs or briefs and oral argument later, as I have some other cases ahead of it that I feel I must dispose of in advance.

Mr. Levit: What time would you suggest, your Honor, on the briefs?

The Court: Well, after the transcript is submitted, I would like to have counsel, if they could, [185] agree on time for briefs, plaintiffs to open.

Mr. Boyle: How about 10-15-10?

Mr. Levit: That is satisfactory. We feel your Honor that the case should, after the briefs have been submitted, should be argued.

The Court: The Court will consider that. That will be the order then for the present.

Mr. Levit: Cost of transcript to be split?

The Court: That will be divided. We will consider oral argument afterward. In all probability the Court will grant it.

(Court adjourned at 12:00 o'clock.) [186]

State of Nevada,
County of Ormsby—ss.

I, Marie D. McIntyre, the duly appointed official court reporter in the United States District Court, in and for the District of Nevada, do hereby certify: That I took verbatim shorthand notes of the testimony adduced and the proceedings had at the trial of the case entitled, "Silvo Questa and Jennie Questa, husband and wife, Plaintiffs, vs. Milwaukee Mechanics' Insurance Company, a corporation, Defendant," No. 199, held in Reno on the 23rd and 24th days of June, 1942, and that the foregoing pages, numbered 1 to 186 inclusive, constitutes a full, true, and correct transcript of my shorthand notes, to the best of my knowledge and ability.

Dated at Carson City, Nevada, this 1st day of July, 1942.

MARIE D. McINTYRE
Official Reporter

[Endorsed]: Filed July 3, 1942.

[Endorsed]: No. 10360. United States Circuit Court of Appeals for the Ninth Circuit. Milwaukee Mechanics' Insurance Company, a corporation, Appellant, vs. Silvo Questa and Jennie Questa, husband and wife, Appellees. Transcript of Record. Upon Appeal from the District Court of the United States for the District of Nevada.

Filed February 5, 1943.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the United States Circuit Court of Appeals
For the Ninth Circuit

No. 10360

MILWAUKEE MECHANICS' INSURANCE
COMPANY, a corporation,

Appellant,

vs.

SILVO QUESTA and JENNIE QUESTA, hus-
band and wife,

Appellees.

STATEMENT OF POINTS TO BE RELIED
UPON ON APPEAL AND DESIGNATION
OF RECORD TO BE PRINTED

To Paul P. O'Brien, Clerk of the above entitled
Court, and to Silvo Questa and Jennie Questa,
Appellees above named, and to William S.
Boyle, Esquire, Attorney for Appellees:

Now Comes appellant above named and files this
statement of points upon which it intends to rely
on the appeal herein, and makes the following desig-
nation of the record which it thinks necessary for
the consideration thereof:

I.

POINTS

1. The judgment is not supported by the find-
ings of fact and conclusions of law made by the trial
court:

a. The findings and conclusions are conflicting, ambiguous, and uncertain as to the amount of insurance called for by the alleged oral contract of insurance;

b. The findings and conclusions are conflicting, ambiguous, and uncertain as to the amount of loss and damage sustained by appellees by reason of the alleged fire;

c. There is no finding of the actual cash value of the property alleged to have been insured at the time of its alleged destruction by fire.

2. The evidence is not sufficient to support the following findings, and each of said findings is clearly erroneous:

a. That an oral contract of insurance was entered into or existed between appellant and appellees;

b. That the amount of insurance called for by the alleged oral contract of insurance was the sum of \$4,000;

c. That appellees applied to appellant for insurance in the sum of \$4,000;

d. That appellees sustained loss or damage by fire in the amount of \$4,000.

3. The judgment is conflicting, ambiguous, uncertain, and invalid with respect to the existence of the alleged oral contract of insurance and the amount of insurance called for thereby, and with respect to the amount of loss and damage sustained by appellees by reason of the alleged fire.

4. The evidence is not sufficient to support the

judgment in the same respects that it is hereinabove in paragraph 2 specified to be insufficient to support the findings.

5. The trial court erred in denying appellant's motion to strike the testimony of appellee Silvo Questa as to the value and cost of reproduction of the property alleged to have been insured and destroyed by fire.

6. The trial court erred in denying appellant's motion to strike the testimony of witness Williams and Exhibits "B" and "E" relating to the cost of reproduction of the property alleged to have been insured and destroyed by fire.

II.

DESIGNATION

Appellant believes that for a proper consideration of the foregoing points the entire record of the trial is necessary, and designates the whole thereof for printing.

Dated: San Francisco, California, February 10, 1943.

LONG & LEVIT
HAWKINS, RHODES &
HAWKINS

Attorneys for Appellant.

(Duly verified.)

[Endorsed]: Filed Feb. 13, 1943. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

STIPULATION RE PRINTING OF RECORD

It Is Hereby Stipulated that the following Exhibits need not be printed, but may be considered by the Court in their original form:

Plaintiffs' Exhibits "A" and "A-1" (photographs);

Plaintiffs' Exhibit "B" (blueprints);

Plaintiffs' Exhibit "C" (fire insurance policy).

Dated: February 13th, 1943.

WILLIAM S. BOYLE

Attorney for Appellees.

LONG & LEVIT

HAWKINS, RHODES &

HAWKINS

Attorneys for Appellant.

So Ordered:

FRANCIS A. GARRECHT

Senior United States Circuit
Judge.

[Endorsed]: Filed Feb. 17, 1943. Paul P. O'Brien, Clerk.

